(25,486)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 656.

FERNAND VAUGHAN GASQUET, APPELLANT,

vs.

CHARLES PAYNE FENNER, TESTAMENTARY EXECUTOR, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

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a UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

FERNAND VAUGHAN GASQUET, Appellant,
versus
CHARLES PAYNE FENNER, Testamentary Executor of the Estate of Mrs. Louisa Lapeyre Gasquet, et al., Appellee.

Messrs. J. C. & Thomas Gilmore and Wm. Winans Wall, for Fernand Vaughan Gasquet, Appellant.
Messrs. Denegre, Leovy & Chaffe, for Charles Payne Fenner, Testamentary Executor of the Estate of Mrs. Louisa Lapeyre Gasquet, et al., Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana, New Orleans Division, to the Supreme Court of the United States, returnable within thirty days from the 13th day of August, A. D. 1916, at the City of Washington, District of Columbia.

TRANSCRIPT OF APPEAL.

1 *Bill of Complaint.*

Filed April 3rd, 1915.

District Court of the United States in and for the Eastern District of Louisiana, New Orleans Division.

In Equity. No. 15244.

FERNAND VAUGHAN GASQUET, Plaintiff,
vs.
CHARLES PAYNE FENNER, Testamentary Executor of the Estate of Mrs. Louisa Lapeyre Gasquet, Deceased; Mrs. Martha Gasquet, Wife of Georgia G. Westfeldt; Mrs. Evelyn Gasquet, Wife of Charles Payne Fenner, and Their Husbands, Defendants.

To the Honorable the Judge of the District Court of the United States in and for the Eastern District of Louisiana:

Fernand Vaughan Gasquet, a resident of the City of Memphis, County of Shelby, State of Tennessee, and a Citizen of the State of Tennessee, brings this, his bill, against Charles Payne Fenner, Testamentary Executor of the Estate of Mrs. Louise Lapeyre Gasquet, deceased, formerly of the City of New Orleans, Mrs. Martha Gasquet, wife of George G. Westfeldt, Mrs. Evelyn Gasquet, wife of

Charles Payne Fenner, said George G. Westfeldt and said Charles Payne Fenner, all citizens of the State of Louisiana, and inhabitants of the Eastern District of Louisiana, residing in the City of New Orleans, Louisiana.

And thereupon your plaintiff complains and says:

I.

That plaintiff is a citizen of the State of Tennessee and is sui juris.

II.

That defendants are all citizens of the State of Louisiana.

2

III.

That plaintiff and defendants, Mrs. Martha Gasquet, wife of George G. Westfeldt, and Mrs. Evelyn Gasquet, wife of Charles Payne Fenner, are the sole descendants and forced heirs of their deceased mother, Mrs. Louise Lapeyre Gasquet, formerly of the City of New Orleans, Louisiana; that said Mrs. Louise Lapeyre Gasquet, deceased, departed this life in said City on the — day of November, 1913, leaving a last will and testament, by which, after making some bequests in the way of special legacies, the remainder of her estate was left to her said children in equal proportions or share and share alike; that in said last will, said Charles Payne Fenner was nominated as Testamentary Executor with seizin and without bond; that said last will and testament, after the death of said Mrs. Louise Lapeyre Gasquet, deceased, was presented to the Civil District Court in and for the Parish of Orleans, State of Louisiana, by said Charles Payne Fenner, and was probated by said court and ordered executed; that said Charles Payne Fenner has been appointed and qualified by said Civil District Court in and for the Parish of Orleans, State of Louisiana, as Testamentary Executor of the Estate of said Mrs. Louise Lapeyre Gasquet, deceased, and given full possession of said Estate, in accordance with said last will and testament.

IV.

That the Estate left by said Mrs. Louise Lapeyre Gasquet, deceased, has been appraised, in an inventory thereof made by order of the said Civil District Court in and for the Parish of Orleans, State of Louisiana, at more that $600,000.00; that plaintiff is informed, believes and so avers that the said Estate has been fully administered by said Charles Payne Fenner, Testamentary Executor, as aforesaid; that the residuum of said Estate, now in the possession of said Charles Payne Fenner, Testamentary Excutor,

3 amounts to more than $600,000.00; that more than one year has elapsed since the appointment of said Charles Payne Fenner as Testamentary Executor of the said Estate, as aforesaid, and that said Charles Payne Fenner, Testamentary Executor, as

aforesaid, owes to plaintiff an accounting for his gestion as Testamentary Executor of the Estate of the said Mrs. Louise Lapeyre Gasquet, deceased; and that plaintiff is entitled to have his undivided one-third interest in the residuum of the Estate of Mrs. Louise Lapeyre Gasquet, deceased, delivered to him by said Charles Payne Fenner, Testamentary Executor, as aforesaid. And the plaintiff hoped that the said Charles Payne Fenner, Testamentary Executor, would have complied with the reasonable request of plaintiff that he deliver to him his interest in the Estate of his said mother, and account to him for his gestion thereof, as in justice and equity he ought to have done.

V.

That plaintiff is unwilling to any longer own the residuum of the Succession or Estate of said Mrs. Louise Lapeyre Gasquet, deceased, in indivision with said Mrs. Martha Gasquet, wife of George G. Westfeldt, and Mrs. Evelyn Gasquet, wife of Charles Payne Fenner, and desires to have a partition of said residuum of said Estate made and all accounts between him and his said co-heirs adjusted, and his share of said Succession delivered to him in full ownership.

VI.

That the said defendants deny plaintiff's right to said adjustment of accounts and said partition.

All which acts, doings and pretenses of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of plaintiff in the premises. In consideration whereof, and forasmuch as plaintiff is remediless in the premises, at and by the strict rules of law, and can only have
4 relief in a court of equity, where matters of this nature are properly cognizable and relievable.

Wherefore, plaintiff prays this Honorable Court:

(*a*) That the said defendant, Charles Payne Fenner, Testamentary Executor of the last will and testament of said Mrs. Louise Lapeyre Gasquet, deceased, be ordered to file a full account of his gestion of the Succession or Estate of Mrs. Louise Lapeyre Gasquet, deceased, and to deliver unto plaintiff, his undivided one-third interest in the residuum thereof.

(*b*) That a partition of the residuum of said Succession or Estate of said Mrs. Louise Lapeyre Gasquet, deceased, between plaintiff and Mrs. Martha Gasquet, wife of George G. Westfeldt, and Mrs. Evelyn Gasquet, wife of Charles Payne Fenner, be made, and, after an adjustment of accounts between plaintiff and said defendants, the plaintiff's share of said Estate be delivered to him.

And plaintiff further prays that it may please Your Honor to grant unto the plaintiff a writ of subpœna, to be directed to the said Charles Payne Fenner, Testamentary Executor of the last will and testament of Mrs. Louise Lapeyre Gasquet, deceased, Mrs.

Martha Gasquet, wife of George G. Westfeldt, Mrs. Evelyn Gasquet, wife of Charles Payne Fenner, said George G. Westfeldt and Charles Payne Fenner, defendants, thereby commanding them and each of them, at a certain time, and under a certain penalty therein to be limited, personally to appear before this Honorable Court, and then and there full, true, direct and perfect answer make to all and singular the premises.

And plaintiff further prays for all general and equitable relief to which he may be entitled in the premises.

(Signed) J. C. & THOS. GILMORE,
" WM. WINANS WALL,
Solicitors for Plaintiff.

5 *Answer.*

Filed April 30th., 1915.

No. 15244.

United States District Court, Eastern District of Louisiana, New Orleans Division. In Equity.

FERNAND VAUGHAN GASQUET
vs.
CHARLES PAYNE FENNER, Testamentary Executor of Estate of Mrs. Louise Lapeyre Gasquet, Deceased, and Mrs. Martha Gasquet Westfeldt, et als., Her Heirs.

To the Judge of the United States District Court for the Eastern District of Louisiana:

The Answer of Charles Payne Fenner, Testamentary Executor of Mrs. Louise Lapeyre Gasquet, deceased; of Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt, and of her said husband, George G. Westfeldt; of Mrs. Evelyn Gasquet Fenner, wife of Charles Payne Fenner, and of her said husband, Charles Payne Fenner, to the bill of complaint of Fernand Vaughan Gasquet,

And thereupon defendants say:

I.

Defendants deny that plaintiff is a citizen of the State of Tennessee and is sui juris, and aver that plaintiff is a citizen of the State of Louisiana, whose domicile is in the City of New Orleans, and is not sui juris.

That in a proceeding or suit entitled In the Matter of the Interdiction of Fernand Vaughan Gasquet, No. 106,435 of the docket of the Civil District Court for the Parish of Orleans, said Civil District Court, being the Court of his domicile having jurisdiction of the subject matter and over the person of said Gasquet, on the petition of George F. Lapeyre and J. Marshall Lapeyre of the City

of New Orleans in a contradictory proceeding in which said Gasquet was personally cited and served with process and personally appeared and defended, pronounced a judgment of interdiction
6 against said Gasquet, adjudged him incapable of taking care of his person and administering his estate, and appointed an administrator pro tempore for the preservation of the movables of said Gasquet and the administration of the immovable estate of the said Gasquet.

That an appeal was taken by said Gasquet from the said judgment of Interdiction to the Supreme Court of Louisiana, which affirmed said judgment on the 22nd day of March, 1915.

II.

Defendants admit that they are all citizens of the State of Louisiana, domiciled in the City of New Orleans, and inhabitants of the Eastern District of Louisiana.

III.

Defendants admit that Mrs. Evelyn Gasquet Fenner, Mrs. Martha Gasquet Westfeldt and Fernand Vaughan Gasquet are the sole descendants and heirs at law of Mrs. Louise Lapeyre Gasquet, deceased, who left a last will and testament by which, after making some bequests in the way of special legacies, she left the remainder of her estate to her said children, share and share alike.

That said Mrs. Gasquet, deceased, appointed defendant Charles Payne Fenner her Testamentary Executor with seizin and without bond; that her will was duly probated and ordered executed by the probate court of her domicile, the Civil District Court of the Parish of Orleans, and that said Fenner has been confirmed and has qualified as such testamentary executor and given full possession of her estate in accordance with said last will and testament.

IV.

Defendants admit that the estate of Mrs. Louise Lapeyre Gasquet has been appraised in an inventory thereof made by order of said Civil District Court, at more than Six Hundred thousand dollars ($600,000.00), and that the debts of the deceased have been paid and legacies delivered but aver that said estate has not been fully administered, as said Fenner has not yet filed, or been ordered
7 to *to* file his Final Account by the said Civil District Court.

To the best of defendants' belief, the resuduum of the property of said deceased remaining in the hands of said Fenner amounts to in the neighborhood of Six hundred thousand dollars ($600,000.00), inventoried value.

Defendants admit that more than one year has elapsed since the confirmation and qualification of said Fenner as Testamentary Executor, but deny that said Fenner owes to plaintiff Gasquet an accounting for his gestion as testamentary executor and that said

Gasquet is entitled to have his undivided one-third (⅓) interest in the residuum of the Estate of Mrs. Louise Lapeyre Gasquet delivered to him by said Fenner.

Defendants aver that said Gasquet having been interdicted as aforesaid by the competent court of his domicile in the proceedings hereinbefore set forth and having been declared incapable of taking care of his person and administering his estate, no account is due or can be made to him, and he is not entitled to delivery of his interest in the estate of said Mrs. Gasquet, but said account must be rendered and delivery of his said interest must be made to a curator to be appointed to him under the laws of Louisiana; that defendant Fenner cannot render his final account, to be discharged from his trust as executor and deliver possession of said Gasquet's interest because the appointment of a curator has been delayed by a writ of error sued out by said Gasquet from the Supreme Court of the United States to the Supreme Court of Louisiana and said writ of error while not affecting the validity or binding force of the hereinabove recited judgment of interdiction—which is, and remains in full force and effect, notwithstanding said writ—nevertheless stays all further proceedings thereunder, including the appointment of a curator to said interdict Gasquet and said Gasquet has specifically opposed the appointment of a curator.

8

V.

Defendants deny that said Gasquet has the right or capacity to demand a partition of the estate of Mrs. Louise Lapeyre Gasquet and the delivery to him of his share in her estate.

VI.

Defendants aver that the effect of said judgment of interdiction under the laws of Louisiana is to liken said Gasquet to a minor, both as respects his person and estate, to annul all acts done by him from the date of filing the petition for interdiction, that is to say the 14th day of November, 1913, and to take from him the administration of his property and place the administration and control thereof in the hands of an officer of the Court pronouncing the judgment of interdiction.

That said judgment of interdiction is in force and binding and is entitled to full faith and credit in this Court under Section 1 Article IV of the Constitution of the United States to which defendants refer and which they now plead in defence.

VII.

Defendants deny that this Court has jurisdiction of this controversy because the plaintiff and all of the defendants are citizens of the State of Louisiana, domiciled in the City of New Orleans, and residents of the City of New Orleans; and, in the alternative, because the property involved in this suit is, and was at the time this suit

was instituted, in the possession and control of the Civil District Court of the Parish of Orleans, which alone is seized with jurisdiction and control thereof, and because the said judgment of interdiction has adjudged the said plaintiff Gasquet non sui juris, and without the capacity to stand in judgment, and because, in any event, the property which is the subject of this suit, being situated within the confines and jurisdiction of the State of Louisiana, and the Courts of said State having adjudged the plaintiff Gasquet incapable of taking care of his person and property, and having tem-
9 porarily placed the said property in the care of an administrator pro tempore who is an officer of said Court, no other Court can interfere therewith and this Court sitting in the State of Louisiana cannot order any disposition of said property contrary to the laws of Louisiana, the said State having full right of control and disposition of all property actually situated within it and the right to declare and to establish its own policy and rules for the government, control and disposition of all property situated within its borders.

And, having made full answer to said bill, these defendants pray to be hence dismissed with costs.

(Signed) DENEGRE, LEOVY & CHAFFE, *Solicitors.*
(Signed) GEORGE DENEGRE,
Of Counsel.

10 *Case Called, Hearing in Part, and Defendant Given 30 Days to Produce Proofs on Questions of Jurisdiction.*

Extract from the Equity Journal.

November Term, 1915.

NEW ORLEANS, Monday, December 6th, 1915.

Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

No. 15244.

FERNAND VAUGHAN GASQUET
vs.
CHARLES PAYNE FENNER, Testamentary Executor, etc., et als.

This cause was this day called for final hearing.
Present: Wm. Winans Wall and Thomas Gilmore, solicitors for Complainant; George Denegre, of counsel for defendants.
Whereupon, the questions of jurisdiction having been raised by counsel for defendants, it is ordered that the hearing of this case be continued for 30 days, in order that counsel may produce proofs on the said questions of jurisdiction.

11 *Testimony of Charles P. Fenner.*

Filed January 26th, 1916.

United States District Court, Eastern District of Louisiana.

No. —.

FERNAND V. GASQUET
vs.
CHARLES PAYNE FENNER, Testamentary Executor, etc.

Proceedings Had in Open Court Before Hon. Rufus E. Foster, United States District Judge for the Eastern District of Louisiana, on the 6th day of December, 1915, on the question of jurisdiction.

Appearances:

Mess. William Winans Wall and Thomas M. Gilmore, attorneys for plaintiff.

Mr. George Denegre, of counsel for defendant.

12 December 6th, 1916.

Mr. Wall: I offer, produce and file in evidence copy of section 149 of the acts of the General Assembly of Tennessee for 1887.

Also section 387 Chancery Code of Tennessee.

Another act of 1881 relating to the Courts.

Offer, produce and file in evidence the entire record in the proceeding on file in the Probate court of Shelby county of Tennessee in the matter of the petition of Ferdinand Gasquet, petition and affidavit thereon, Exhibits *a* and B, the order summoning the jury and the endorsement thereon, the verdict of the jury and the judgment of the court thereon.

Objection.

Mr. Denegre: To all of that evidence we object on the ground that it is irrelevant and inadmissible. It is a collateral attack on the validity of the judgment rendered by the Civil District Court for the parish of Orleans and affirmed by the Supreme Court of Louisiana. This is an offer of a decision in a court of Tennessee which can have no force and effect, on judgments rendered in the courts of Louisiana.

The Court: The objection is overruled.

Offer.

Mr. Denegre: I offer, produce and file in evidence certified copy of the record of the Civil District Court for the parish of Orleans entitled Interdiction of F. V. Gasquet. Also the decision of the Supreme

Court of this State affirming that judgment and reported in the 136 Louisiana, page 958, and it is agreed that we may refer to that book instead of having a certified copy.

Admission.

13 It is admitted that as to the decision shown, that the case reported in the 136 Louisiana has been removed to the Supreme Court of the United States by writ of error.

I also offer in evidence a certified copy of the Will and Codicil to the Will of Mrs. Louise G. Gasquet, Certified copy of the probate of the Will of Mrs. Gasquet and a certified copy of the letter of executorship issued to Mr. Charles Payne Fenner.

CHARLES P. FENNER, witness, sworn and examined, testified as follows:

Direct examination.

By Mr. Denegre:

Q. You are the testamentary executor of Mrs. Gasquet?
A. I am.
Q. Have you filed an account yet?
A. No sir, I have not.
Q. Have all of the obligations as between the heirs been setlled?
A. No sir.
Q. Have all the debts been paid?
A. All of the debts of the succession that were due at the time of Mrs. Gasquet's death.
Q. That is, all the debts of the deceased have been paid?
A. All the debts that were due at the time, or owing at the time of the death of Mrs. Gasquet have been paid. There is a debt due that has been contracted by me as executor in pursuance of a contract that was made prior to the death of Mrs. Gasquet, which is still owing, but all the debts that were due at the time of the opening of the succession have been paid.

14 Q. But I mean the debts of the deceased have been paid?
A. Yes sir.

Q. You say that was a contract made by Mrs. Gasquet prior to her death and carried out by you as executor?
A. Yes sir.
Q. What is the amount of that?
A. The amount of the debt now is $60,000.
Q. Have your fees as executor been paid?
A. Not a dollar.
Q. Have you advanced anything to Ferdinand Gasquet as executor on his share?
A. I have advanced very considerably more than his interest in the revenues of the estate.
Q. No account of that has been made to the court as yet?

A. No sir. I would just like to state before I leave the stand that so far as I am concerned as executor I am, and have always been not merely willing but anxious to render an accounting and to have a partition of this estate among the heirs just as soon as it can be legally *be* effected, and the only reason I have not rendered an accounting and effected a partition among the heirs, is that I conceive that the situation has been up to this time and is to day such that it is impossible for me to do so; in other words I conceive there is no one contradictorily with whom I could render an account in so far as the share of the plaintiff in this case Fernand V. Gasquet is concerned.

Cross-examination.

By Mr. Wall:

Q. I understand in the statement which you have just made, that your objection to rendering an account is that you believe that Fernand V. Gasquet is not sui juris and not capable of receiving *validity* an accounting by you in so far as he is concerned?

A. Yes sir.

Q. And that he has no representative that could properly represent him?

A. Yes sir.

Offer.

Mr. Wall: We offer in evidence, supplemental to the record of the Supreme Court of State of Louisiana offered by Mr. Denegre, copy of the plea in abatement and copy of the petition for writ of error in that case.

Certified Copy of Chapter CXLI, Acts of 1881.

Filed December 6th, 1915.

STATE OF TENNESSEE,
Department of State:

To all to whom these presents shall come, Greeting:

I, R. R. Sneed, Secretary of State of the State of Tennessee, do hereby certify that the annexed is a true copy of Chapter CXLI of the Acts of the General Assembly of the State of Tennessee, 1881, the original of which is now on file and a matter of record in this office.

In testimony whereof, I have hereunto subscribed my Official Signature and by order of the Governor affixed the Great Seal of the State of Tennessee at the Department in the City of Nashville, this Twenty-second day of November, A. D. 1915.

[SEAL.] (Signed) R. R. SNEED,
Secretary of State.

17 Chapter CXLI.

An Act to amend the Act of 1870, chapter 28, now section 316*h* of Thompson & Steger's Code, establishing the Probate Court of Shelby County.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, That the Probate Court of Shelby County shall have and exercise all the jurisdiction of the County Court which may be exercised at its quorum terms except that pertaining to public roads and the appointment of overseers thereof, and that pertaining to ferries, water courses and local improvements and public buildings, and except also the jurisdiction, powers and duties conferred upon the chairman County Court as chairman and as financial agent of the County.

Sec. 2. Be it further enacted, That said court shall have and exercise all the jurisdiction and powers of a chancery court over all the persons and matters embraced within its jurisdiction by said section 316*h* of the Code and by this Act, and shall also have and exercise all the powers and jurisdiction over the persons and matters committed to its jurisdiction, which are now conferred by law on the County Courts or County Judges in other counties.

Sec. 3. Be it further enacted, That this Act shall take effect from and after its passage, the public welfare requiring it.

Passed April 5, 1881.

18 GEO. H. MORGAN,
Speaker of the Senate.
H. B. RAMSEY,
Speaker of the House of Representatives.

Approved April 5, 1881.

ALVIN HAWKINS, *Governor.*

19 *Certified Copy of Section 387 of Shannon's Code of Tennessee.*

Filed December 6th, 1915.

STATE OF TENNESSEE,
Department of State:

To all to whom presents shall come, Greeting:

I, R. R. Sneed, Secretary of State of the State of Tennessee, do hereby certify that the annexed is a true copy of Section 387 of Shannon's Code of Tennessee, viz: Probate Court of Shelby County; jurisdiction of probate court of Shelby County, the original of which is now on file and a matter of record in this office.

In testimony whereof, I have hereunto subscribed my Official Signature and by order of the Governor affixed the Great Seal of the State of Tennessee at the Department in the City of Nashville, this Twentieth day of November, A. D. 1915.

[SEAL.] (Signed) R. R. SNEED,
Secretary of State.

20 *Code of Tennessee of the Judicial Department.*

387. (316*h*) 354. Probate Court of Shelby County; Jurisdiction of probate court of Shelby County.—A court of record is established in Shelby County, to be called the "Probate Court of Shelby County," consisting of one judge, elected by the qualified voters of the county, and having the same qualifications and terms of office as the circuit judges of the state. Said Court shall have original jurisdiction of all matters of probate, the administration of estates and orphans' business, embracing all the subjects and powers enumerated in, and conferred by, sections 4201, 4203, 4204, 4205, and 4208 of the code of 1858, and concurrent jurisdiction with the chancery courts of Shelby county over the persons and estates of idiots, lunatics, and other persons of unsound mind, and of proceedings for the partition or sale of estates by personal representatives, guardians, heirs, tenants in common, joint owners, or coparceners; for the sale of lands at the instance of creditors of decedents, where the personalty is insufficient to satisfy the debts of the estate, and for the allotment of dower; and it is hereby vested with all the powers of a chancery court touching these matters: shall have and exercise all the jurisdiction of the county court which may be exercised at its quorum terms, except that pertaining to public roads and the apportionment of overseers thereof, and that pertaining to ferries, water courses,
and local improvements and public buildings, and except
21 also the jurisdiction, powers and duties conferred upon the chairman of the county court as chairman and as financial agent of the county. Said court shall have and exercise all the powers and jurisdiction over the persons and matters committed to its jurisdiction which are now conferred by law on the county courts or county judges in other counties. The judge is also vested with all the powers conferred by law upon judges of the inferior courts in this State. From said court an appeal shall lie directly to the supreme court. (1870, ch. 86; 1881, ch. 141, sec.'s 1, 2.)

22 *Certified Copy of Chapter No.* 149, *Act of the* 45*th General Assembly of the State of Tennessee of* 1887.

Filed December 6th, 1915.

STATE OF TENNESSEE,
Department of State:

To all to whom these presents shall come, Greeting:

I, R. R. Sneed, Secretary of State of the State of Tennessee, do hereby certify that the annexed is a true copy of Chapter No. 149, Acts of the 45th General Assembly of the State of Tennessee,—1887, the original of which is now on file and a matter of record in this office.

In testimony whereof, I have hereunto subscribed my Official

Signature and by order of the Governor affixed the Great Seal of the State of Tennessee at the Department in the City of Nashville, this — day of ——, A. D. 19—.

[SEAL.] (Signed) R. R. SNEED,
Secretary of State.

[Documentary 10¢ Stamp Cancelled.]

23 Chapter No. 149.

An Act conferring jurisdiction on the County Court to declare persons who have been declared lunatics or of unsound mind of sound mind, and to restore to them the control of their property.

May Make Application to County Court.

Section 1. Be it enacted by the General Assembly of the State of Tennessee, that when any person shall be declared a lunatic, or person of unsound mind, as now provided by law, and afterwards shall become restored in mind, such person, upon the written certificate of two respectable physicians that he or she is a person of sound mind, may make application by petition to the County Court, and the court shall order the Sheriff forthwith to summon a jury of twelve freeholders or householders, to ascertain, by inquisition, the condition of such person's mind and make return thereof to the Court at that or the succeeding term.

Form of Writ.

Sec. 2. Be it further enacted, The writ issued to the Sheriff may be in the following form:

STATE OF TENNESSEE,
—— *County:*

To the Sheriff of —— County, Greeting:

You are hereby commanded to inquire, by the oath of twelve freeholders or house holders, summoned by yourself, whether —— ——, of ——, in the county of ——, is a lunatic or person of unsound mind, so that he has not capacity sufficient for the government of himself and his property. And you are further commanded that at certain days and places appointed by yourself, you diligently make application in the premises and the same dis-
24 tinctly and plainy m*a*de return to the County Court of said county at its next session, together with the writ.

Witness —— ——, Clerk of said court, at Office, — the — day of ——, 18—.

May Be Returnable to Same Term.

Sec. 3. Be it further *further* enacted. The writ may be returnable to the same term of the court from which it issues, if the court

so direct; and in such case the same proceedings shall be had as if the return were made to the next succeeding term.

Subpœna for Witnesses.

Sec. 4. Be it further enacted, The Clerk of the County Court or any Justice of the Peace, upon application, may issue subpœna for witnesses to attend the inquisition, and such witnesses are subject to the penalties and entitled to the privileges and compensations or regular witnesses.

Costs.

Sec. 5. Be it further enacted, The cost shall be paid by the party making the application, and if he shall be declared a lunatic, it shall be paid out of his estate.

Return.

Sec. 6. Be it further enacted, That upon the return of jury, which shall be in writing and entered upon the minutes of the County Court that said person is of sound mind and competent to control himself and his property, the court shall pronounce a degree declaring such person of sound mind; and the guardianship of such person, if any exist, shall terminate, and he may demand settlement of his guardian.

Where the Jury Cannot Agree.

Sec. 7. Be it further enacted, That if the jury do not agree, the court may issue an alias and pluries writ to the Sheriff who shall summon twelve other freeholders or householders to try the cause.

25 Where Applicant Is Declared a Lunatic.

Sec. 8. Be it further enacted, That if the applicant shall be declared a lunatic or person of unsound mind, so that he can not control himself and business, no second application shall be made to the court until after one year.

Sec. 9. Be it further enacted, The application provided for herein may be made in any county where the applicant may reside, or where his property or guardianship may be.

Passed March 19th, 1887.

W. L. CLAPP,
Speaker of the House of Representatives.
Z. W. EWING,
Speaker of the Senate.

Approved March 24th, 1887.

ROBT. L. TAYLOR, *Governor.*

26 *Record in the Matter of the Petition of Fernand V. Gasquet for a Writ Inquirendo de Lunatico of the County Court of Shelby County, Memphis, Tennessee.*

Filed December 6th., 1915.

In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

To the Honorable J. S. Galloway, Judge:

Your petitioner, Fernand Vaughn Gasquet, would respectfully show unto the Court that he was formerly a resident of the State of Louisiana and the City of New Orleans; that on or about the 7th day of June 1912, an indictment in which petitioner was charged with shooting with intent to murder a certain individual, there was returned by the Grand Jury of the Parish of Orleans, Louisiana, "Not a true bill, on account of the insanity of the defendant." Whereupon your petitioner was confined in the asylum for the criminal insane by a judgment of the Criminal District Court of the State of Louisiana, and the City of New Orleans, and was sent to the Touro Infirmary, there located, where your petitioner remained under custody and supervision of the officers until released, as hereinafter stated.

Petitioner would show that on the — day of —— 19— a proceeding was filed against your petitioner for interdiction in the Civil District Court of New Orleans, Louisiana; that said cause was tried before the Court on the 15th day of June, 1914, the Court holding that your petitioner was subject to interdiction, the judgment of the Court rendered in said cause being as follows:

27 No. 106,435.

Div. C. Civil District Court.

"Interdiction of Fernand Vaughn Gasquet.

"This cause having been argued and submitted to the Court on the 2nd inst., and the Court having taken time to consider and being duly advised, and by reason of the law and evidence, being in favor of plaintiffs and against defendant and for reasons orally assigned.

"It is ordered, adjudged and decreed that there be judgment in favor of the plaintiffs and against defendant, Fernand Vaughn Gasquet, decreeing that said Fernand Vaughn Gasquet is incapable of taking care of his person and administering his estate, and pronouncing his interdiction; costs of this proceeding to be paid out of the estate of the said defendant.

"Judgment read and rendered in open Court on this 15th day of June, 1914.

"Judgment read and signed in open Court on this 19th day of June 1914.

(Signed) "E. K. SKINNER, *Judge.*"

Petitioner would further show that an appeal was taken from said judgment, and the same was affirmed by the Supreme Court of the State of Louisiana and is now resting in said Court on petition to rehear.

Petitioner would further show that after judgment in the interdiction proceeding was entered against him as above mentioned, in the Civil District Court, he being at the time confined in the Touro Infirmary, as heretofore stated, he, on the — day of —— 1914, filed a petition in the Court of Appeals in the State of Louisiana and City of New Orleans, for a writ of Habeas
28 Corpus. This writ was directed to the Criminal Sheriff, commanding him to produce petitioner in court, the petition praying that after such hearing the latter be at once released from custody and restored to his liberty. The Court of Appeals issued the writ, and after hearing the testimony rendered a judgment in the proceeding against the sheriff, declaring that your petitioner was not insane and that his release would not be dangerous to the community, and ordered him discharged and released from custody.

In accordance with said judgment your petitioner was released, whereupon he immediately left the State of Louisiana and came to the City of Memphis, in Shelby County, Tennessee, reaching here on or about the 24th, day of July, 1914, making said City of Memphis his place of residence, and has resided in said place continuously since said time and is at present a permanent resident and citizen of the city of Memphis and the County of Shelby and State of Tennessee. The Supreme Court of Louisiana, in its decision affirming the judgment of the interdiction hereinabove referred to, denied the jurisdiction of the Court of Appeals to grant the writ of Habeas Corpus upon which your petitioner was released; said Habeas Corpus proceeding as your petitioner is advised, was not before the Supreme Court by appeal or review or other procedure for review and your petitioner is not advised how said Supreme Court could annul or set aside the proceeding of the Court of Appeals in regard to said Habeas Corpus proceeding; but nevertheless your petitioner would respectfully show to the Court that he is now and was at and before the time the Habeas Corpus proceedings were instituted, and has continued ever since to be, a person of sound mind and fully capable of exercising control over himself and his property, and does not admit that he was ever otherwise.

29 Petitioner would further show to the Court that he is possessed of considerable estate, which is now being withheld from him, and an attempt is being made through the Courts of Louisiana to appoint a curator for the purpose of taking charge of and administering petitioner's estate.

Your petitioner would show that in view of the question made as to his sanity, he has, since his arrival in Memphis, placed and kept himself constantly under the supervision and inspection of

eminent specialists in nervous diseases, but has not taken any treatment for any mental trouble, none being deemed necessary by these physicians. Petitioner presents herewith written certificate of two reputable physicians, well known practitioners in the City of Memphis, that he is of sound mind, Said certificates being made Exhibits "A" and "B" hereto.

Premises Considered, your petitioner prays that the Court shall order the Sheriff forthwith to summon a jury of twelve free-holdres or house-holders, to ascertain by inquisition the condition of petitioner's mind and make return thereof to the Court at its present term, and that upon such return the Court make all proper orders and grant all proper relief as may be warranted by law and the finding of said jury.

McGEHEE, LIVINGSTON & FARABOUGH,
Attorneys for Petitioner.

STATE OF TENNESSEE,
County of Shelby:

Fernand Vaughn Gasquet, the petitioner in the above styled cause, makes oath that the statements in said petition made as of his own knowledge are true, and those made on information and belief he believes to be true.

FERNAND VAUGHN GASQUET.

30 Subacribed and sworn to before me this February 19, 1915.
[SEAL.] FRED. S. TOOMBS,
Notary Public.

31 In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

Certificate of Dr. Wm. G. Sommerville.

To the Honorable J. S. Galloway, Judge:

I, Wm. G. Sommerville, do hereby certify that I am a regularly licensed and practicing physician in the City of Memphis, County of Shelby and State of Tennessee, and as such physician have been practicing in said State for four years. I further certify that I am acquainted with Fernand Vaughan Gasquet and have had occasion to see him frequently since August 1, 1914. I further certify that the said Gasquet is a person of sound mind.

This the 19th day of February 1915.

WM. G. SOMMERVILLE.

Subscribed and sworn to before me this the 19th day of February, 1915.
[SEAL.] FRED. S. TOOMBS,
Notary Public.

Exhibit "A."
3—656

32 In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

Certificate of Dr. Geo. E. Pettey.

To the Honorable J. S. Galloway, Judge:

I, Geo. E. Pettey, do hereby certify that I am a regularly licensed and practicing physician in the City of Memphis, County of Shelby and State of Tennessee, and that as such physician I have been practicing in the City of Memphis for the past fifteen years. I further certify that I am acquainted with Fernand Vaughan Gasquet, have known him since about the first of August, 1914, and have had occasion to see him every few days since that time. I further certify that the said Gasquet is a person of sound mind and is fully capable of exercising control over himself and his property.

This the 19th day of February, 1915.

GEO. E. PETTEY.

Sworn to and subscribed before me this the 19th day of February, 1915.

[SEAL.] FRED. S. TOOMBS,
Notary Public.

Exhibit "B."

33 In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

To the Clerk of the County Court of Shelby County, Tennessee:

Upon the petitioner in the above styled cause giving bond for costs with good security in the sum of $250.00 you will issue writ to the Sheriff of this County, as prayed for in this petition and in accordance with the law as provided.

J. S. GALLOWAY, *Judge.*

Endorsed: Filed 2/20/15.

34 *Cost Bond.*

We, Fernand V. Gasquet as principal and —— —— acknowledge ourselves indebted to State of Tennessee in the sum of Two Hundred & Fifty Dollars. To be void if the said Fernand V. Gasquet Complainant in a petition which has this day been filed in the Probate Court of Shelby County, against the said — shall pay all such costs as may be awarded against him by the Court in its dercees and orders in said Bill.

This 20 day of Feb'y 1915.

FERNAND V. GASQUET. [SEAL.]
M. S. McGEHEE, *Surety.* [SEAL.]

Sureties Sworn and justified before me, and by me approved.

JNO. C. McLEMORE, *Clerk.*
E. B. CRENSHAW, *D. C.*

35 In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

To the Sheriff of Shelby County, Greeting:

You are hereby commanded to inquire, by the oath of twelve freeholders, or householders, summoned by yourself, whether Fernand Vaughan Gasquet, of Memphis, in the County of Shelby, is a lunatic or person of unsound mind, so that he has not capacity sufficient for the government of himself and his property. And you are further commanded that, at certain days and places appointed by yourself, you will diligently make application in the premises; and the same, distinctly and plainly made, return to the County Court of said County at its present term, together with the writ.

Witness Jno. C. McLemore, Clerk of said Court, at Office, the 20 day of February, 1915.

JNO. C. McLEMORE, *Clerk,*
By E. B. CRENSHAW.

36 17859, R. 21.

In re Petition of Writ to Sheriff.

Fernand V. Gasquet.

Issued 2/20/15.

Come to hand 2-20-15 and executed by summons the following name- persons for jury in the matter of petition of Fernand Vaughan Gasquet: C. H. Cole, C. M. Berry, J. W. McNally, A. T. Walker, A. H. Cohen, Frank Novitski, B. F. Young, Jno. Dolan, S. E. Yates, Oscar Klenke, Jas. Degnon, G. W. Barnet.

2-20-15 and these verdict returns herewith.

(Signed) J. A. REICHMAN, *Sheriff,*
By WM. ROGERS, *D. S.*

37 In the Probate Court of Shelby County, Tennessee.

In the Matter of Petition of FERNAND VAUGHAN GASQUET.

STATE OF TENNESSEE,
County of Shelby:

The undersigned jurors, having been duly summoned and sworn to inquire and ascertain whether the within named Fernand

Vaughan Gasquet is a lunatic or person of unsound mind so that he has not capacity sufficient for the government of himself and his property, upon oath do say that he is of sound mind and has sufficient capacity for the government of himself and his property.

As witness our hands this 20 day of February, 1915.

C. H. COLE, *Foreman.*
A. H. COHEN.
C. M. BERRY.
A. T. WALKER.
FRANK NOVITZKI.
J. W. McNALLY.
O. N. KLENKE.
G. W. BARNETT.
JNO. J. DOLAN.
B. F. YOUNG.
S. E. YATES.
JAS. DEGNON.

Endorsed: Filed 2/20/15.

38 STATE OF LOUISIANA,
Shelby County, ss:

Pleas Before the Honorable J. S. Galloway, Judge of the Probate Court of Shelby County, held in the City of Memphis and State and County aforesaid, and at the February Term thereof, 1915.

Be it remembered, that on to-wit, 23 day of February 1915 it being one of the days of said February 1915 Term, the following appears of record in the words and figures, viz:

In re of No. 17859, R. 21.

FERNAND V. GASQUET, Ex Parte.

This cause was this day heard upon the whole record, including especially the petition of Fernand Vaughan Gasquet filed herein February 20, 1915, making application for a jury of twelve freeholders to ascertain by inquisition the condition of mind of the said Fernand Vaughan Gasquet, and praying that the Court make all proper orders and grant all proper relief in the premises as warranted by law and the findings of said jury, the fiat of the Honorable J. S. Galloway Judge, directing the issuance to the Sheriff of writ of inquisition as prayed in said petition and in accordance with law, the said writ of inquisition issued to the Sheriff directing that he summon said jury, together with the return of the Sheriff upon said writ, the testimony of witnesses introduced and examined before said jury, and the verdict duly signed by said jurors, all householders or freeholders of Shelby County, Tennessee, which verdict is in words and figures as follows to wit:

The undersigned jurors, having been duly summoned and sworn to inquire and ascertain whether the within named Fernand
39 Vaughan Gasquet is a lunatic or person of unsound *nimd* so that he has not capacity sufficient for the government of himself and his property, upon oath do say that he is of sound mind and has sufficient capacity for the government of himself and his property.

As witness our hands this the 20th day of February, 1915.

C. H. COLE, *Foreman.*
A. H. COHEN.
C. M. BERRY.
A. T. WALKER.
FRANK NOVITZKI.
J. W. McNALLY.
O. N. KLENKE.
G. W. BARNETT.
JNO. J. DOLAN.
B. F. YOUNG.
S. E. YATES.
JAS. DEGNON.

And it appearing to the Court that the petitioner Fernand Vaughan Gasquet, is and has been since about July 28th, 1914 a resident and citizen of the County of Shelby and State of Tennessee, having removed his domicile to said county and State on about said date from the Parish of Orleans and State of Louisiana, where he formerly resided, and that, while a resident of said Parish of Orleans and State of Louisiana, by proceedings brought in the Civil District Court at New Orleans, Louisiana, he was adjudged incapable of taking care of his person and administering his estate and was therefore interdicted, and that previous thereto he was adjudged mentally unsound by the Criminal District Court, of the State of Louisiana, in the City of New Orleans, but that the said Petitioner for some time before July 24, 1914, was and has ever since continued to be of sound mind and of sufficient capacity for the government of himself
40 and his property, and that the verdict of the jury as hereinbefore set forth is in proper form and warranted, by the evidence, it is also ordered, adjudged and decreed by the Court.

It is therefore ordered, adjudged and decreed that said verdict of the jury be and the same is hereby confirmed and it is further adjudged decreed and declared by the Court that said Fernand Vaughan Gasquet is a person of sound mind and capable and competent to control himself and his property, and that he is entitled to settlement from any and all persons having control, charge or management of any part of his estate, real or personal any disability of the said Gasquet by reason of the proceedings against him hereinbefore mentioned being hereby removed.

41 STATE OF TENNESSEE,
Shelby County:

I, Jno. C. McLemore, Clerk of the County and Probate Courts of said County, do hereby certify that the foregoing thirteen pages contain a full, true and perfect copy of the whole record in the matter of the petition of Fernand V. Gasquet for a writ inquirindo de lunatico as the same appears of record now on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at office, in the City of Memphis, this 28 day of April 1915.

[SEAL.] (Signed) JNO. C. McLEMORE, *Clerk.*

STATE OF TENNESSEE,
Shelby County:

Probate Court Room.

MEMPHIS, TENN, Apl. 28, 1915.

I, J. S. Galloway, sole and presiding Judge of the Probate Court of said County, certify that Jno. C. McLemore, who gave the foregoing Certificate, is now, and was at the time of signing the same, Clerk of said Court, and that said Court is a Court of Record, and that his attestation is in due form, and his official acts as such are entitled to full faith and credit.

Witness my hand this 28 day of April 1915.

(Signed) J. S. GALLOWAY, *Judge.*

STATE OF TENNESSEE,
Shelby County:

I, Jno. C. McLemore, Clerk of the Probate Court of said County, certify that Hon. J. S. Galloway, whose genuine official signature appears to the above hereto annexed Certificate, is and was at the time of signing the same, sole and presiding Judge of the
42 Probate Court in and for the County and State aforesaid, duly commissioned and qualified, and that all his official acts, are entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at office, in the City of Memphis, this 28 day of April 1915.

SEAL.] (Signed) JNO. C. McLEMORE, *Clerk.*

43 *Petition for Subpœna and Subpœna Duces Tecum (Subpœne ad Testificandum) and Order Thereon.*

Filed January 25th, 1916.

United States District Court, Eastern District of Louisiana, New Orleans Division.

No. 15244.

FERNAND VAUGHAN GASQUET
vs.
CHARLES PAYNE FENNER, Testamentary Executor, etc., et als.

To the Honorable Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana:

The petition of Charles Payne Fenner, Testamentary Executor of Mrs. Louise L. Gasquet, and of all other defendants in the above titled cause respectfully shows:

That heretofore, under the orders of this Court, a commission was issued to take the testimony of plaintiff on the issue of citizenship and domicile and said commission has been returned with the testimony of plaintiff. Petitioners further show that heretofore in proceedings in the Civil District Court in and for the Parish of Orleans, in the matter of Interdiction of Fernand Vaughan Gasquet, No. 105,896 of the docket, Thomas Gilmore of this City was appointed Administrator Pro Tempore of the said Gasquet to take charge of the said Gasquet's property during the pendency of the proceedings, and that in his capacity as said Administrator Pro Tempore he has received from the Executor of the said Gasquet's mother, Mrs. Louise L. Gasquet, sums of money from time to time to pay the living expenses of the said Fernand Gasquet and has transmitted the same to said Gasquet and, as Administrator Pro Tempore, has frequently written to said Gasquet and received letters from said Gasquet during the period of time since the said Gasquet departed from the City of New Orleans on the seventh day of July, 1914, acknowledging receipt of said remittances, and has been advised by said
44 Gasquet in said letters of his various movements and of his intentions with reference to length of time he intended to remain at various places, and his future movements and intentions as to permanent or temporary residence in various places and especially with reference to his residence in Memphis, Tennessee, and his intention and purpose in going to said Memphis.

Petitioners further show that the production of said letters at the trial of this case is necessary to their defense thereof, and that they expect by and through the said letters written by the said Fernand Vaughan Gasquet and received by the said Gilmore, to contradict the testimony given by the said Gasquet under the commission aforesaid and prove that said Gasquet's purpose in going to Memphis was not

to acquire a permanent domicile or residence at that place, but only temporary and for the purpose of treatment.

Wherefore petitioners pray that it may please the Court to order the issuance of a subpœna and a subpœna duces tecum to Thomas Gilmore of this City, ordering him to appear and testify at the trial of the above entitled cause in this Court, on Wednesday, the 26th day of January, 1916, at eleven o'clock A. M. and to bring with him at the same time and produce in Court all letters received by him from Fernand V. Gasquet from the seventh day of July, 1914, to the date of the trial; and petitioners pray for such other and further order as may be necessary and proper, and for general relief.

(Signed) DENEGRE, LEOVY & CHAFFE,
Att'ys for Def'ts.

George Denegre being duly sworn says that he is counsel for defendants in the above entitled suit and that the facts and allegations of the foregoing petition are true to the best of his knowledge and belief.

(Signed) GEORGE DENEGRE.

45 Sworn to and subscribed before me, at New Orleans, Louisiana, on this, the twenty-fifth day of January, 1916.

[SEAL.] (Signed) H'Y J. LOISEL,
Deputy Clerk U. S. District Court.

Order.

The foregoing petition considered, it is ordered that a subpœna ad testificandum and subpœna duces tecum do issue to Thomas Gilmore of this City as prayed for.

(Signed) RUFUS E. FOSTER, *Judge.*

Jan. 25, 1916.

46 *Marshal's Return.*

Filed January 27th, 1916.

Received by U. S. Marshal New Orleans, La. January 25/16.
And on the same day month and year I served copy hereof — Thomas Gilmore by handing same to him in person in New Orleans, La.

(Signed) FRANK M. MILLER, *Marshal,*
By A. H. VERRET,
Deputy Marshal.

47 *Exception to Writ of Subpœna Duces Tecum.*

Filed January 26, 1916.

United States District Court, Eastern District of Louisiana, New Orleans Division.

No. 15244.

FERNAND VAUGHAN GASQUET
versus
CHARLES PAYNE FENNER, Testamentary Executor, etc., et als.

To the Honorable Rufus E. Foster, Judge of the United States District Court for the Eastern District of Louisiana:

Now, into Court, comes Thomas Gilmore, against whom a subpœna duces tecum was issued herein on January 25, 1916, ordering him to appear and testify at the trial of the above entitled and numbered cause in this Court on Wednesday the 26th day of January, 1916, at 11 o'clock A. M., and to bring with him at the same time and produce in court all letters received by him from Fernand V. Gasquet from the 7th day of July, 1914, to date of trial.

That this appearer from a date long prior to July 7, 1914, has been a duly licensed attorney and counsellor-at-law of the State of Louisiana, and is licensed to practice before this and other Federal courts as an attorney and counsellor-at-law.

That long prior to July 7, 1914, and up to the present moment, this appearer has been at all times and is now the personal legal adviser and attorney and counsellor-at-law of Fernand Vaughan Gasquet, the plaintiff, and that during said time, appearer has never received a single letter or communication from the said plaintiff that was not addressed to him as his legal adviser and attorney and counsellor-at-law; that the subject matter of all such letters was confidential in character and communicated to appear by reason of the relationship of attorney and counsellor-at-law and client subsisting between them, which letters and communications were, therefore, of that character entitled by law to the privilege conferred by law,

48 and particularly Article 2283 of the Revised Civil Code; and that appearer has no right and cannot be compelled to divulge or publish their contents.

That for the reasons above set forth, the writ of subpœna duces tecum issued herein should be recalled, rescinded and annulled.

Wherefore, appearer excepts to said subpœna duces tecum, and prays that the same may be recalled, rescinded and annulled.

And for general relief.

(Signed) THOS. GILMORE.

Affidavit.

Personally came and appeared before me, the undersigned authority, Thomas Gilmore, the appearer herein, who being first by me

duly sworn, deposes and says; that all the facts and allegations set forth herein are true.

(Signed) THOS. GILMORE.

Sworn to and subscribed before me at New Orleans, La., this 26th day of January, 1916.

[SEAL.] (Signed) CHARLES SCHNEIDAU,
Notary Public.

49 *Hearing on Return and Exception of Thomas Gilmore to Writ of Subpœna Duces Tecum and Order Rescinding and Annulling Same.*

Extract from the Equity Journal.

November Term, 1915.

NEW ORLEANS, Wednesday, January 26th, 1916.

Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

No. 14244.

FERNAND VAUGHAN GASQUET
VS.
CHARLES PAYNE FENNER, Testamentary Executor, etc., et als.

This cause came on this day to be heard upon the return filed to the writ of subpœna duces tecum issued to Thomas Gilmore in this cause on January 25th, 1916, and also upon the exception thereto, and was argued by counsel for the respective parties;

Whereupon, and on due consideration thereof, it is now ordered by the Court that the said exception be, and the same is hereby, sustained, and that the said writ of subpœna duces tecum issued to Thomas Gilmore in this cause on January 25th, 1916, be rescinded and annulled.

50 *Hearing and Submission of Question of Jurisdiction Raised by Defendant and also of Case.*

Extract from the Equity Journal.

November Term, 1915.

NEW ORLEANS, Wednesday, January 26th, 1916.

Court met pursuant to adjournment.
Present: Hon. Rufus E. Foster, Judge.

No. 15244.

FERNAND VAUGHAN GASQUET
vs.
CHARLES PAYNE FENNER, Testamentary Executor, etc., et als.

This cause was this day called for trial;
Present: Thomas Gilmore and Wm. Winans Wall, solicitors for complainant; George Denegre and Henry H. Chaffe, solicitors for the Defendants;
Whereupon, the cause was taken up on the question of jurisdiction raised by the defendants in their answer on file, and after hearing evidence and arguments of counsel on the said question of jurisdiction raised by the defendants in their answer, the matter was submitted, when the Court took time to consider;
And thereupon, the cause was taken up before the Court upon the merits and the Court heard the pleadings and the evidence offered on behalf of the respective parties and also arguments of counsel, and the case was submitted, when the Court took time to consider.

51 *Deposition of Fernand Vaughan Gasquet for Complainant.*

Filed January 10th, 1916.

Deposition of Fernand Vaughan Gasquet, Taken under Commission before George H. Poole, United States Commissioner, Western District of Tennessee, at Memphis, Tennessee, on the 7th., Day of January, A. D. 1916.

FERNAND VAUGHN GASQUET, who resides in Memphis, Tennessee, being duly sworn, answered as follows:

Q. What is your name, age and residence?
A. Fernand Vaughan Gasquet; 39 years old, Memphis, Shelby County, Tennessee.
Q. What relationship, if any, do you bear to the plaintiff in the above numbered and entitled cause?

A. I am the plaintiff.
Q. In what State, County and City do you reside?
A. Tennessee, Shelby County, City of Memphis.
Q. When did you first take up your residence there?
A. July 28-1914.
Q. When did you leave the City of New Orleans and the State of Louisiana?
A. July 7th-1914.
Q. Do you intend to return to the State of Louisiana to live?
A. No, never. I have left the State of Louisiana permanently.
Q. What was your purpose in going to Memphis, Tennessee?
A. To become a resident of that City and a citizen of the State of Tennessee.
Q. Where do you expect to have your home or domicile in the future?
A. In the City of Memphis, State of Tennessee.
52 Q. Of what State are you a citizen?
A. Tennessee.
Q. Are you an elector of the State of Tennessee, registered according to law?
A. Yes.
Q. If you answer "Yes", annex your poll tax receipts and registration certificate to this deposition?
A. I annex hereto my registration certificate and poll tax receipt.
Q. What has been your fixed intention, since you first went to Memphis, Tennessee, with reference to your residence and citizenship?
A. I have always and at all times since I first came to Memphis, intended to make the city of Memphis my permanent home and to be a citizen of the State of Tennessee and since that time, I have never entertained any other intentions with respect to my permanent place of residence and citizenship.

Cross-interrogatories:

Q. Name the date on which you left New Orleans.
A. July 7-1914.
Q. Name the place to which you went from New Orleans.
A. Gulfport, Mississippi.
Q. Name the Hotel in which you resided while at such place.
A. Great Southern Hotel.
Q. How long did you remain at such place and in such hotel?
A. Three weeks.
Q. Did you not take with you, or were you not accompanied by, a trained nurse, who was employed by you?
A. Yes.
53 Q. Did not this trained nurse remain with you during the whole of your stay at the above named place?
A. Yes.
Q. What use had you for a trained nurse? Explain the services which she rendered to you.

A. To administer morphine to me and to render the usual services of a professional nurse to her patient.

Q. Was it not one of the duties of the trained nurse to administer morphine to you daily?

A. Yes.

Q. On what day did you leave Gulfport?

A. July 28th, 1914.

Q. To what place did you go from Gulfport?

A. Memphis, Tennessee.

Q. On what day did you arrive in Memphis?

A. July 28th-1914.

Q. At what Hotel did you stop in Memphis on your arrival?

A. Chisca Hotel.

Q. If, in answer to the above question, you say you did not stop at any hotel, then at what place or house did you stop when you arrived in Memphis?

A. ——.

Q. Where did you go from the Hotel or the place at which you first stopped when you reached Memphis?

A. Dr. George E. Petty's Sanitarium, 958 South 5th St.

Q. On what day did you enter Dr. Petty's hospital, or sanitarium, or institution, or place yourself under Dr. Petty's care?

A. August 1st-1914.

Q. For what purpose did you enter Dr. Petty's sanitarium, or hospital, or institution, or place yourself under Dr. Petty's care?

54 A. To take a course of treatment for the elimination of morphine.

Q. How long did you remain in Dr. Petty's institution, or under Dr. Petty's care?

A. Nearly fourteen (14) months.

Q. What treatment or cure was administered to you while in Dr. Petty's institution, or under his care?

A. Dr. George E. Petty's treatment. The details of the treatment are not communicated to the patient.

Q. Was the treatment or cure successful?

A. Yes.

Q. If you say it was not successful, then explain why it was not successful?

A. ——.

Q. After you left Dr. Petty's institution, or charge, to what hotel, house or place did you go in Memphis?

A. Peabody Hotel.

Q. How long did you remain at such hotel, house, or place?

A. Two weeks.

Q. Did you not leave Dr. Petty's institution against his will and advice?

A. No.

Q. Did you not return to Dr. Petty's care or to Dr. Petty's institution again?

A. Yes.

Q. Why did you return to Dr. Petty's institution, and how long did you remain there, or under Dr. Petty's care the second time?

A. I returned to Dr. Petty's Sanitarium at his request, so that he could have better supervision over me, and regulate my diet. I remained there until October the 20th. 1915.

55 Q. After you left Dr. Petty's institution the last time, to what house, hotel or place did you go?

A. Chattanooga, Tenn., Hotel Patten.

Q. How long did you remain at such house, hotel or place?

A. Two months.

Q. Where did you go when you had left Memphis after you had left Dr. Petty's institution?

A. Hotel Patten, Chattanooga, Tenn.

Q. How long did you remain at such place?

A. Two months.

Q. In what hotel, or house, did you live at such place?

A. Hotel Patten, Chattanooga, Tenn.

Q. When did you return to Memphis from this place?

A. December 22nd-1915.

Q. Where are you now stopping in Memphis?

A. Am stopping temporarily at the Peabody Hotel, pending my moving in a few days into an apartment, which I have leased by the year for my permanent home.

Q. Has not your trained nurse been constantly in your employ and in your pay since you left New Orleans?

A. No.

Q. (*a*) Did not your trained nurse accompany you to Memphis?

A. (*a*) Yes.

Q. (*b*) Did she not return with you to Memphis?

A. (*b*) Yes.

Q. (*c*) Did she not return with you to Memphis?

A. (*c*) No.

Q. Has not your trained nurse been in constant attendance upon you ever since you left New Orleans?

A. No.

Q. (*a*) If you say she has not been in constant attendance upon you, state the number of times she has left you. (*b*) Where
56 did she go each time she left you? (*c*) How long was she absent each time?

A. (*a*) She left me twice, (*b*) went to New Orleans both times, (*c*) About two weeks each time.

Q. Is she not now in attendance upon you? If not, state the exact date on which she left you?

A. The lady who was my trained nurse, no longer is in attendance upon me as such—primarily because I have no need of the services of a trained nurse—and secondarily, because she has been my wife for sometime.

Q. Has it not been her duty during all of that period to administer morphine to you daily?

A. No.

Q. Name the date and year of the first visit you ever made to Memphis, and state who accompanied you on such first visit?

A. July 1906, I came alone.

Q. Who has furnished you with the money to pay your expenses since you left New Orleans?

A. Thomas Gilmore.

Q. Give the name of the person who made the remittance to you.

A. Thomas Gilmore.

Q. Give the name of the person who handed you the checks or the money constituting these remittances.

A. Thomas Gilmore.

Q. Did the checks or remittances come direct to you from New Orleans, or were the checks or remittances handed to you by some person in Memphis?

A. They came direct to me from New Orleans.

Q. If you say they were sent to you direct from New Orleans, name the person who sent them to you. If you say they were handed to you or delivered to you by someone in Memphis, name the person in Memphis who handed or delivered them to you.

57 A. They were sent to me by Thomas Gilmore.

Q. (*a*) Have you been assisted or advised by anyone with reference to any one or more of your answers to the above questions? (*b*) If so, by whom? (*c*) Have you consulted anyone with reference to your answers to any one or more of the above questions? (*d*) If so, whom have you consulted?

A. (*a*) No. (*c*) No.

Q. You are required to answer categorically each of the above numbered questions, and each subdivision of a numbered question. Have you done so? If not, why have you failed to so answer?

A. Yes.

(Signed) FERNAND VAUGHAN GASQUET.

Sworn to and subscribed before me at Memphis, Tenn. January 7, 1916.

[SEAL.] (Signed) GEORGE H. POOLE,
U. S. Commissioner, Western District of Tennessee.

58 *Testimony Taken in Court on Question of Jurisdiction.*

Filed January 26th., 1916.

No. —.

United States District Court, Eastern District of Louisiana.

FERNAND V. GASQUET
vs.
CHARLES PAYNE FENNER, Testamentary Executor, etc.

Proceedings had in open court before the Hon. Rufus E. Foster, United States District Court Judge for the Eastern District of Louisi-

ana, on the 26th day of January 1916, on the question of jurisdiction, and also on the merits of the case.

Appearances: Mess. W. W. Wall and Thomas M. Gilmore, for plaintiff; Mr. George Denegre, of counsel for defendant.

59 *Evidence on the Question of Jurisdiction.*

Mr. Denegre: Solely on the issue raised by the answer to the Subpœna duces tecum, we offer in evidence on behalf of the defendant, certified copy of the record of the Civil District Court for the Parish of Orleans No. 106,435 of the docket of that court especially portions thereof showing the appointment of Thomas Gilmore as the Administrator pro tempore of Fernand V. Gasquet, namely the rule taken for the appointment of administrator pro tempore, the order making the rule absolute, the oath of Thomas Gilmore as administrator pro tempore, his bond as administrator pro tempore, and his letters or commission issued to him by the Civil District Court as such administrator pro tempore. On the same issue we swear Mr. Gilmore.

THOMAS GILMORE, witness sworn and examined testified as follows:

Examined by Mr. Denegre:

Q. As administrator pro tempore of Fernand V. Gasquet, you received from time to time from Mr. Charles P. Fenner, the executor of his mother's estate, certain monies for his account?

A. Yes sir.

Q. And you forwarded those to him?

A. Yes sir.

Q. And you have received acknowledgments from him of the forwarding of those monies?

A. Yes sir.

Q. He has been absent from the State of Louisiana since the 7th of July 1915?

A. Yes sir.

Q. And therefore in sending him these remittances you
60 have communicated with him in writing and you have received his acknowledgements in writing?

A. Yes sir.

Examined by Mr. Wall:

Q. Sinse Mr. Fernand Gasquet left the State have you ever received a single letter from him in which his private confidential matters were not fully discussed, particularly the law suits in this State in which you were representing him as attorney?

A. No sir. I have not received a single letter which was not—in which pending legal business was not discussed.

Q. Were these receipts embodied in long communications dis-

cussing his financial affairs or were they simply separate receipts for remittances?

A. They were not separate. They were in these letters in which he discussed his legal affairs.

Objection:

Mr. Wall: We desire to make objection here that the receipts for monies remitted to Fernand V. Gasquet would be absolutely irrelevent to any issue on trial in suit. The only disputed point in suit, as your Honor will recall, is whether this man became a citizen of the State of Tennessee.

Mr. Denegre: I set forth in my subpœna duces tecum and I expect by these letters to contradict his statement that he went to the City of Memphis, Tennessee for the purpose of establishing a domicile there and acquire citizenship. I expect to show that his purpose in going there was purely and entirely temporary, that he went there to be cured at a sanitarium, that is all.

61 Examined by Mr. Denegre:

Q. You wrote letters to him. After he left here he went to Gulfport and remained there how long?

A. About three weeks.

Q. During that time you did communicate with him and send him money?

A. Yes sir.

Q. And you did receive letters in reply?

A. Yes sir. When I applied to be appointed administrator pro tempore I held his active power of attorney that he had given me prior to the interdiction suit, and it was upon that evidence principally I think I was appointed, Mr. Denegre, that, you agreed, was a good reason I should be appointed.

Q. So when you were appointed administrator pro tempore you held Mr. Gasquet's power of attorney to represent him as agent?

A. Yes sir.

Q. And that power of attorney was in force when the application was made to the Civil District Court to interdict him?

A. Yes sir.

Q. Now, how long a time elapsed between the time that Gasquet left this State on July 7th and his reaching Memphis?

A. As I stated he stayed in Gulfport about three weeks and then went directly from Gulfport to Memphis.

Q. About July 28th he went to Memphis did he not?

A. Well, yes, he was in Gulfport about three weeks.

Q. What did he go to Memphis for?

Objection: Objected to by counsel for plaintiff as absolutely irrelevant on this issue.

Q. Mr. Gilmore do you know that Mr. Gasquet went to Memphis, Tennessee for the purpose of entering Dr. Petit's sanitarium to be treated for morphine?

62 Objection: Mr. Wall: I object to that. That might be a proper question on the trial of the main case, but not on the question of whether he should produce confidential communications.

The Court: I sustain the objection to answering the subpœna duces tecum.

Mr. Denegre: I reserve a bill to the ruling of the court.

Cross-examination.

By Mr. Wall:

Q. You held this power of attorney from Gasquet prior to your appointment as administrator pro tempore. Were you his counsel and legal adviser also?

A. Yes sir, he consulted me as a lawyer at the time of his father's death. That was in 1908.

Offer: Mr. Wall: We offer the testimony of Fernand Gasquet taken in the City of Memphis, Tennessee, in evidence. We also offer, in connection with an answer to one of the interrogatories which states that he has leased an apartment, the written lease.

Objection: Mr. Denegre: Objected to on the ground that it is not authenticated and does not prove itself.

The Court: I rule it out.

Offer: Mr. Wall: We re-offer all the evidence heretofore offered at the first hearing of this case.

THOMAS GILMORE, recalled, testified as follows:

Examined by Mr. Denegre:

Q. Did not Mr. Gasquet go to Memphis to be treated in Doctor Petit's sanitarium?

63 Objection: I object to Mr. Gilmore disclosing anything communicated to him by Mr. Gasquet of a private and confidential nature. I do not object to his answering that particular question.

A. Yes sir.

Q. Did he not leave Dr. Petit's sanitarium and did you not refuse to send him any more money until he went back there again?

Objection: Mr. Wall: I object to that.

The Court: I overrule the objection.

A. Yes sir, for a brief period I sent remittances to Doctor Petit.

Q. During a brief period then, you sent your remittances to Doctor Petit and you refused to furnish Gasquet with money unless through Doctor Petit?

A. Yes sir. Doctor Petit had told me that when these treatments were completed, the patient is very much exhausted and they are apt to have a relapse unless there is supervision over them and he thought the best thing was not to let Gasquet have his money. He locks up a good many people during that treatment. The treatment

is very severe and leaves them in an exhausted state, and they crave stimulants of all kinds and are apt to get them if they are allowed to go about with a lot of money.

Q. When he finally left Doctor Petit's sanitarium did he not leave it against the Doctor's consent, did not the Doctor want him to remain there longer?

A. Not that I know of.

Q. You either know or you don't?

A. I don't know.

64 Q. You don't know?

A. No sir.

Q. Did you receive any communications from Doctor Petit with reference to sending him money?

A. In reference to sending Mr. Gasquet money?

Q. Yes, after that time?

A. Well, after this period, after the treatment was over, I just resumed my sending money to Gasquet. I sent to Doctor Petit I suppose two or three checks.

Q. What I mean is this, Mr. Gasquet you testified went there to undertake this cure in Doctor Petit's sanitarium. You sent the money direct to Mr. Gasquet and then Mr. Gasquet left Doctor Petit and you refused to send him money unless he went back to Doctor Petit, and you sent the money then for some short time through Doctor Petit. Now, when Mr. Gasquet left Doctor Petit the first time did you not get communications form Doctor Petit with reference to Gasquet having left there against his will?

A. Well, I do not think it was against Doctor Petit's will. He never said it was against his will. He did not want to force him to stay there if he did not want to.

Q. Did he not tell you he had not been cured, the whole thing was not over and he ought to remain there longer?

Objection: Mr. Wall: Objected to as hearsay.

Mr. Denegre: Then I call for the letters.

Objection: Mr. Wall: I object to the call.

The Court: I sustain the objection to the call for Doctor Petit's letters.

Mr. Denegre: I reserve a bill to the ruling of the court.

The Court: I will reserve my ruling on the question of jurisdiction until the case is tried on its merits.

65 *On the Merits of the Case:*

Offer: Mr. Gilmore: We offer, produce and file in evidence certified copy of the proceedings taken in the court of appeals for the Parish of Orleans on the writ of Habeas Corpus.

Objection: Mr. Denegre: I object to the offer as irrelevant to the issue in this case, and so decided by the Supreme Court of the State of Louisiana in the case of the interdiction of Gasquet.

The Court: I will reserve my ruling on that.

Offer: Mr. Wall: We re-offer everything that was offered at the previous hearing subject to the objections heretofore made.

Offer: Mr. Denegre: I offer all of the evidence that was heretofore offered by me in this case including the testimony of Mr. Fenner, subject to the objections heretofore made.

66 *Transcript of Record of the Court of Appeals, Parish of Orleans, State of Louisiana, in the Matter of Habeas Corpus Proceedings, No. 6198, State ex Rel. Fernand Vaughan vs. Matthew J. Long, Criminal Sheriff of the Parish of Orleans.*

State of Louisiana. Court of Appeal, Parish of Orleans.

Filed January 26th, 1916.

No. 6198.

STATE ex Rel. FERNAND VAUGHN GASQUET
vs.
MATTHEW J. LONG, Criminal Sheriff of the Parish of Orleans.

Per Curiam:

In June 1912 the relator was committed to the State Insane Asylum by the Criminal District Court, under Sec. 993 R. S. on the ground that he was then in such mental condition at to constitute a menace to the safety of citizens and the peace of the State. This commitment was however never carried out and he is still under the custody of the Criminal Sheriff of Orleans Parish.

He now applies to this Court for his release by Habeas Corpus on the ground that those conditions no longer exist, that he has recovered his sanity and that it would no longer endanger the safety and peace of the community that he be restored to his liberty.

The only evidence adduced fully establishes his contention; There is no evidence whatever to the contrary.

Under Art. 104 Constitution 1913 this Court has the power to issue the writ of Habeas Corpus in such cases that is "at the instance of any person in actual custody" within this circuit.

Art. 822 par. 2 and Art. 824, Code of Practice, authorize the release of the Relator under the circumstances; that is to say, when the change in conditions render the confinement no longer necessary or legal.

It is therefore ordered that the writ of Habeas Corpus issue herein be made peremptory; and accordingly that the Relator Fernand Vaughn Gasquet be discharged and released from custody forthwith. New Orleans, La., July 7th, 1914. A true copy.

[SEAL.] (Signed) H. J. STANSBURY,
D'y Clerk.

New Orleans, La., January 29th, 1916.

67 State of Louisiana, Court of Appeal, Parish of Orleans.

No. 6198.

STATE ex Rel. FERNAND VAUGHN GASQUET
vs.
MATTHEW J. LONG, Criminal Sheriff of the Parish of Orleans.

Petition for Writ of Habeas Corpus.

To the Honorable the Court of Appeals for the Parish of Orleans, State of Louisiana, or any Judge of Said Court.

The petition of the State of Louisiana, on the relation of Ferdinand Vaughn Gasquet, of lawful age and a resident of this City, with respect, shows;

That relator was charged before the Grand Jury of the Parish of Orleans of having shot, on April 28th, 1912, with a shot gun, with felonious intent in so doing, feloniously, willfully and of his malice aforethought to kill and murder one Isaac Broad, otherwise known as Isaac Brown, and that on June 7, 1912, the said Grand Jury returned on said indictment or presentation "Not a true bill, on the ground of insanity," all of which will appear more fully from said indictment or presentation and the endorsements thereon, annexed hereto as part hereof, and marked Exhibit "A."

That on June 28, 1912, relator was committed to the Criminal Ward of the East Louisiana Hospital for the Insane by Frank D. Christien, Judge of Section B of the Criminal District Court for the Parish of Orleans, pretending to act pursuant to and by virtue of the authority of Section 993 of the Revised Statutes of Louisiana and Act 264 of 1910 of the Acts of the General Assembly of the State of Louisiana, and that, by reason of said commitment, relator is now in the actual custody of Matthew J. Long, Criminal Sheriff of the Parish of Orleans, State of Louisiana, and deprived of his
68 liberty, all of which will appear more fully by the copy of the rule for commitment and the endorsement thereon, annexed hereto as part hereof, and marked Exhibit "B,"

That by the Constitution of 1898, exclusive jurisdiction of intersuits was vested in the Civil District Court of the Parish of Orleans.

That Section 993 of the Revised Statutes was repealed by Act No. 253 of 1910 of the Session of the General Assembly for the State of Louisiana.

That Act No. 264 of the Session of 1910 of the General Assembly of the State of Louisiana refers, in terms, only to those who are charged or convicted of the commission of crime at the time of the commitment.

That at the time of relator's said commitment, as hereinabove set forth, he was neither charged nor convicted of any crime, and, therefore, did not fall within the purview of said Act No. 264 of the Session of 1910 of the General Assembly of the State of Louisiana.

That by Act No. 253 of the Session of 1910 of the General Assembly of the State of Louisiana, and by Article 133 of the Constitution of the State of Louisiana for the year 1898, the Civil District Court was vested with exclusive jurisdiction to commit relator to an insane asylum, and, therefore, his said alleged commitment was by a court absolutely without jurisdiction ratione materiæ, and was, therefore, absolutely null and void and of no effect.

That Section 993 of the Revised Statutes of the State of Louisiana is also absolutely null, void and of no effect, because said Section of the Revised Statutes provides for giving effect to the ex parte finding of the Grand Jury, which is an inquisitorial body, without hearing the party whose rights of liberty and property and status in society are by said Grand Jury determined without a
69 judicial hearing, without trial by jury and without due process of law, in violation of the bill of rights of the State Constitution, and of Amendments Six and Fourteen of the Federal Constitution, the proceedings of Grand Juries being ex parte and secret and affording to the person whose rights and liberty and property and status in society that may be affected thereby and opportunity to appear and present his defence.

That Act No. 264 of 1910, and particularly Section 4 thereof, is absolutely unconstitutional, null and void, and in violation of the bill of rights of the State Constitution and amendments Six and Fourteen of the Federal Constitution, in that said act provides that when any person charged with a felony necessarily punishable in the State Penitentary, or by death, had been adjudged insane, before or after trial or conviction, and shall be committed to a State hospital for the insane, such person shall not be discharged from said Hospital for the Insane or delivered into the custody of the proper sheriff until the Superintendent of the East Louisiana Hospital for the Insane of the State of Louisiana, the Superintendent of the Louisiana Hospital for the Insane, and in case of their disagreement, a physician appointed by the Judge of the District Court from whence said criminal insane person was committed, which said gentlemen are hereby constituted as a commission, shall be satisfied, after a thorough examination, that such person has been completely restored to sanity and may be discharged without danger to others.

That the said provisions of the said act leaves a person committed to said asylum entirely at the mercy of the said parties who are vested with exclusive authority to certify to his sanity vel non, and deprives the said person committed to the said asylum of a judicial hearing, due process of law and trial by jury, in violation of the State Constitution and Amendment- Six and Fourteen of the Federal Constitution.

70 That said act is violative of Article 96 of the State Constitution in that it delegates judicial powers in violation of said Article.

That relator is harmless and his going at large would not constitute a menace or be dangerous to the public safety, as will appear more fully by the affidavit of Jos. A. O'Hara, Coroner of the City of

New Orleans, annexed hereto as part hereof, and marked Exhibit "C."

Wherefore, the premises and annexed affidavit considered, relator prays that a writ of habeas corpus may issue herein, directed to Matthew J. Long, Criminal Sheriff of the Parish of Orleans, commanding him to bring and produce Fernand Vaughn Gasquet before this Honorable Court on such day and at such hour as the court may appoint; and that, after due hearing, the said Fernand Vaughn Gasquet be at once released and restored to liberty.

And for general relief.

Signed) WM. WINNANS WALL,
J. C. & THOMAS GILMORE,
Attorneys.

FERNAND VAUGHN GASQUET.

Sworn to and subscribed before me at New Orleans, La., this 25th day of June 1914.

(Signed) CHARLES SCHNEIDAU,
Notary Public.

Order.

Let a writ of habeas corpus issue herein as prayed for and according to law, directed to Matthew J. Long, Criminal Sheriff of the Parish of Orleans, commanding him to produce Fernand Vaughn Gasquet before the Court of Appeal for the Parish of Orleans, and to then and there show cause why said Fernand Vaughn Gasquet is detained, and why he should be at once released and set at liberty; and let said writ be made returnable on Tuesday the 7th day of July in the year 1914 at 11 o'clock A. M.

(Signed) JOHN ST. PAUL, *Judge.*

New Orleans, La., June 30th. 1914.

A true copy.

[SEAL.] (Signed) H. J. STANSBURY,
D'y Clerk.

N. O. Jan'y 29/16.

71 STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Before me, the undresigned authority, personally came and appeared Joseph A. O'Hara, of age and of this Parish, who being duly sworn, deposes and says: that he is the Coroner of the Parish of Orleans; that he is well acquainted with Fernand Vaughn Gasquet, and his present condition mentally and physically; that said Fernand Vaughn Gasquet is sane, responsible and harmless, and his release from custody would not ne a menace or dangerous to public safety.

(Signed) J. A. O'HARA, M. D.

Sworn to and subscribed before me at New Orleans, La. this 25th, day of June 1914.

(Signed) CHARLES SCHNIDAU,
Notary Public.

A true copy.
[SEAL.] (Signed) H. J. STANSBURY,
D'y Clerk.

New Orleans, La. January 29th, 1916.

72 STATE OF LOUISIANA,
Court of Appeal, Parish of Orleans:

No. 6198.

STATE OF LOUISIANA ex rel. FERNAND VAUGHN GASQUET
VS.
MATTHEW J. LONG, Criminal Sheriff of the Parish of Orleans.

Writ of Habeas Corpus.

The State of Louisiana to Matthew J. Long, Criminal Sheriff of the Parish of Orleans, New Orleans, Louisiana, Greeting:

You are hereby commanded in the name of the State of Louisiana and of the Court of Appeal for the Parish of Orleans, to produce before the Court of Appeal for the Parish of Orleans, at New Orleans, Louisiana, on the Seventh day of July in the year 1914 A. D. at Eleven o'clock A. M. Fernand Vaughn Gasquet and to then and there show cause why he is detained and why he should not be at once released from custody and given his liberty.

And herein fail not under penalty of the law.

Witness the Honorables John St. Paul, Emile Godchaux, and Charles F. Claiborne, Judges of said Court, this first day of July in the year of our Lord One Thousand Nine Hundred and Fourteen.

(Signed) H. J. STANSBURY,
D'y Clerk.

A true copy.
[SEAL.] (Signed) H. J. STANSBURY,
D'y Clerk.

New Orleans, La. January 29th, 1916.

73 STATE OF LOUSIANA,
Court of Appeal, Parish of Orleans:

No. 6198.

STATE OF LOUISIANA ex rel. FERNAND VAUGHN GASQUET
VS.
MATTHEW J. LONG, Criminal Sheriff Parish of Orleans.

Answer.

And now into Court comes Matthew J. Long, Criminal Sheriff for the Parish of Orleans, and in accordance with the order of this Honorable Court, produces Fernand Vaughn Gasquet; and he, the said Matthew J. Long, Criminal Sheriff for the Parish of Orleans, says that he holds, as Criminal Sheriff of this Parish, the said Fernand Vaughn Gasquet, under a commitment issued by the Honorable the Criminal District Court for the Parish of Orleans, a copy of which said commitment is hereto annexed, which ordered that the defendant, Fernand Vaughn Gasquet, be committed to the Louisiana States Asylum for the Criminal Insane, at Jackson, Louisiana, until such time as he be cured and of sound mind, said commitment being signed on June 28th, 1912, by the Minute Clerk of said Court, as is further shown by a copy hereto annexed.

And he, the said Matthew J. Long, Criminal Sheriff for the Parish of Orleans, does further say that the said Fernand Vaughn Gasquet has not up to this time, been sent to the Louisiana State Asylum for the Criminal Insane, at Jackson, Louisiana, because the said Insane Asylum could not receive him, and up to this time have been unable to receive him as a patient.

And he, the said Matthew J. Long, Criminal Sheriff for the Parish of Orleans, annexes copy of the Indictment No. 40,089 now on file in the Criminal District Court for the Parish of Orleans, copy of the motion filed by the District Attorney, based on the finding
74 of the Grand Jury, and a certified copy of the Minutes of the court showing the disposition of the said motion.

STATE OF LOUISIANA,
Parish of Orleans, City of New Orleans:

Before me, Charles J. Reilly, Deputy Clerk, Criminal District Court, personally appeared, Matthew J. Long, who being first duly sworn, did depose and say:—That he is the Criminal Sheriff for the Parish of Orleans, and that the foregoing return made by him to the writ of Habeas Corpus issued herein is true and correct in every respect.

(Signed) MATT. J. LONG,
Criminal Sheriff Parish of Orleans.

Sworn to and subscribed before me, this third day of July, A. D., One thousand, nine hundred and fourteen (1914).

(Signed) CHAS. J. REILLY,
Deputy Clerk, Criminal District Court Parish of Orleans.

A true copy.
[SEAL.] (Signed) H. J. STANSBURY,
D'y Clerk.

New Orleans, La., January 29th, 1916.

75 Clerk's Office of the Criminal District Court, Parish of Orleans.

NEW ORLEANS, LA., July 3rd, 1914.

I, Charles J. Reilly, a Deputy Clerk of the Criminal District Court do hereby certify that the foregoing is a true and correct copy, as the same appears on file and of record in the Clerk's Office of the Criminal Court, in the case of the State of Louisiana, versus, Ferdinand Vaughn Gasquet, No. 40089.

In testimony whereof I hereunto sign my name and affix the seal of the State of Louisiana, at the City of New Orleans, this 3rd day of July, 1914.

(Signed) CHAS. J. REILLY,
Deputy Clerk.

A true copy.
[SEAL.] (Signed) H. J. STANSBURY,
D'y Clerk.

New Orleans, La., January 29th, 1916.

76 Criminal District Court Section.

No. 40089.

STATE OF LOUISIANA
VS.
FERNAND VAUGHN GASQUET.

Indictment for Shooting With Intent to Murder.

Now into Court here comes St. Clair Adams, District Attorney for the Parish of Orleans, who prosecutes on behalf of the State of Louisiana, and gives the Court here to understand and be informed that the Grand Jury for the Parish of Orleans, in the above numbered and entitled cause, returned, "Not a true Bill", upon the ground of insanity;

That under the Revised Statutes of 1870, sec. 993, it is provided that whenever any person arrested to answer for any crime before any court in this State, shall not be indicted by the Grand Jury by reason of the insanity or mental derangement of such person, and

the discharge and going at large of such person shall be deemed by the court to be dangerous to the safety of the citizens or the peace of the State, that the court is authorized and empowered to commit such person to the State insane hospital, there to be detained until he is restored to his right mind or otherwise delivered by due course of law;

That the defendant, Fernand Vaughn Gasquet has been declared insane and mentally deranged by the Grand Jury; that his discharge and going at large is dangerous to the safety of the Citizens and the peace of this State: that he should be committed to the criminal ward, of the East Louisiana Hospital for the Insane, as is provided in the aforesaid section of the Revised Statutes and according to the terms of Act 264 of 1910, p. 454.

77 It is ordered, by the Court, that the matter of the State of Louisiana versus Fernand Vaughn Gasquet be set down upon the docket for trial for Friday, June 14th, 1912, in order that the Court may be advised and instructed as to whether said Ferdinand Vaughn Gasquet is in such a mental condition as to be dangerous to the peace and good order of the community, and in order that it be determined whether or not he shall be committed to the ward for the Criminal Insane in the East Louisiana Hospital for the insane, there to be kept in custody, treated and cared for until he has been completely restored to sanity.

(Signed) FRANK D. CHRISTIAN, *Judge.*

New Orleans, La., June 11th, 1916.

A true copy.

[SEAL.] (Signed) H. J. STANSBURY,
D'y Clerk.

New Orleans, La. January 29th, 1916.

78 THE STATE OF LOUISIANA,
Parish of Orleans, ss:

Criminal District Court for the Parish or Orleans.

The grand jurors of the State of Louisiana, duly empaneled and sworn in and for the body of the Parish of Orleans, in the name and by the authority of the said State, upon their oaths, present; That one Fernand Vaughn Gasquet late of the Parish of Orleans, on the twenty-eight day of April in the year of our Lord, one thousand, nine hundred and twelve, with force and arms in the Parish of Orleans aforesaid, and within the jurisdiction of the Criminal District Court for the Parish of Orleans, with a certain dangerous weapon, to-wit, a shot gun, feloniously did shoot one Isaac Broad, otherwise known as Isaac Brown, with the felonious intent in so doing, feloniously, wilfully and of his malice aforethought to kill and murder the said Isaac Broad, otherwise know as Isaac Brown, contrary to the form of the Statute of the State of Louisiana in

such case made and provided against the peace and dignity of the same.

(Signed) ST. CLAIR ADAMS,
District Attorney for the Parish of Orleans.

A true copy.
[SEAL.] (Signed) H. J. STANSBURY,
D'y Clerk.

New Orleans, La., January 29th, 1916.

79 STATE OF LOUISANIA,
Parish of Orleans:

Criminal District Court for the Parish of Orleans.

Friday the 28th day of June, 1912.

Present; the Honorable Frank D. Christian, judge of said Court.

Section B.

No. 40089.

STATE OF LOUISIANA
VS.
FERDINAND VAUGHIN GASQUET.

Indictment for Shooting with Intent to Murder.

It is this day ordered by the Court, that the defendant, Ferdinand Vaughin Gasquet, be committed to the Louisiana State Asylum for the Criminal Insane, at Jackson, Louisiana, until such time as he be cured and of sound mind.

Extracts from the minutes of this court.
Clerk's office June 28th, 1912.

(Signed) W. S. PATRICK,
Minute Clerk.

A true copy.
[SEAL.] (Signed) H. J. STANSBURY,
D'y Clerk.

New Orleans, La. January 29th, 1916.

80 Rental Contract.

Filed January 26th, 1916.

Rental contract.

For the consideration hereafter mentioned, I, Hunter Wilson, have this day leased and rented to F. V. Gasquet the lower East apartment of the premises known as the Hunter Wilson Apartments at 1540 Union Avenue, Memphis, Tennessee, for the sum of $75.00

per month, for a term beginning January 6, 1916, and ending August 31, 1916.

It is expressly agreed and understood that the lessor is to furnish said apartment with heat during that portion of the year heat is needed, and water during the entire term of this lease.

It is further agreed and understood that the lessor is to keep the roof in good repair, and any and all other necessary repairs to keep the apartment in good habitable condition, where the condition is not brought about by the negligence of the lessee, or his agents. It is agreed that if the plumbing or any other part of the house should become stopped up, damaged or uninhabitable by the negligence of the lessee or his agents, the lessee is to make all necessary repairs at his own expense.

It is agreed that this lease covers also the use of a garage and servants' house in the rear of the -partment, and the lessor is to furnish coal for heating the servants' house during the winter season.

At the expiration of this lease on August 31st. 1916 the lessee has the option to renew the same for a term of one year, beginning Sept. 1, 1916, and ending Sept. 1, 1917, on the same terms as hereinafter set out, provided, however, that the lessee notify the lessor in writing of his desire to renew the lease for another year not later than July 15, 1916, forty five days before the expiration of the present lease.

81 The consideration of this lease is the sum of $587.50, $62.50 of which is cash, the receipt of which is here acknowledged, and the execution of seven promissory notes of this date in the sum of $75.00 each payable to Hunter Wilson, the first of which is due and payable February 1, 1916, and one the first day of each month thereafter until the expiration of this lease. It is agreed and understood as a part of the consideration of this lease that all of said notes are to be endorsed by Dr. Geo. E. Pettey, of Memphis, Tennessee, or some other party acceptable to the lessor. In case of the non payment of any of said rental notes when they fall due, the lessor reserves the option to treat the lease as forfeited by the lessee, and all of said notes shall become due and payable at once, and reserves the option to demand the possession of the premises at once, to which the lessee agrees and contracts to accede to, in case such demand is made on him, and to possession at once.

When this lease expires on August 31, 1916, if the option herein granted to the lessee is not exercised, the lessee agrees to deliver to the lessor peac-able possession of the premises, in as good condition as they are at the beginning of the lease, wear and tear excepted. If the option to renew the lease is exercised, then no new lease contract is necessary, but the lessee will execute new notes, with an acceptable endorser in the sum of $75.00 each payable the first of each month for the term of the entire lease.

Witness our hands this January 6, 1916.

(Signed) HUNTER WILSON.

" F. VAUGHAN GASQUET.

82 *Record on the Interdiction of Fernand Vaughan Gasquet No. 106,435 of the Docket of the Civil District Court for the Parish of Orleans, State of Louisiana.*

Filed January 26th, 1916.

Civil District Court, Division "C."

No. 106,435.

Interdiction of FERNAND VAUGHAN GASQUET.

Petition and Affidavit.

Filed Nov. 3rd., 1913.

To the Honorable, the Judges of the Civil District Court in and for the Parish of Orleans:

The petition of Mrs. Eveline Gasquet Fenner, wife of Charles Payne Fenner, of Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt, authorized by their said husbands, and of George F. Lapeyre and J. Martial Lapeyre, all of whom reside in the City of New Orleans,

With respect represents:-

That your petitioners Mrs. Eveline Gasquet Fenner and Mrs. Martha Gasquet Westfeldt *and* the sisters, and your petitioner-, George F. Lepeyre and J. Martial Lapeyre are the maternal uncles of Fernand Vaughan Gasquet, who resides an is domiciled in the City of New Orleans.

That, owing to infirmities, the said Fernand Vaughan Gasquet is incapable of taking care of his person or administering his property, and that it is therefore advisable and necessary that he be interdicted in accordance with law.

Wherefore petitioners pray that the said Fernand Vaughan Gasquet be cited to appear and answer this petition, and that after due proceedings had there be judgment pronouncing his interdiction.

And petitioners pray for all general and equitable relief in the premises.

(Sg.) EVELINE GASQUET FENNER,
" MARTHA GASQUET WESTFELDT,
" J. M. LAPEYRE,
" G. F. LAPEYRE,
83 " DENEGRE, LEOVY & CHAFFE,
Attorneys for Petitioners.

We authorize our wives—

(Sg.) GEORGE A. WESTFELDT.
" CHAS. PAYNE FENNER.

Mrs. Eveline Gasquet Fenner and Mrs. Martha Gasquet Westfeldt being duly sworn, say that all the allegations of fact made in the foregoing petition are true except as to those allegations expressly made on information and belief, and that as to those affiants believe them to be true.

Sg. EVELINE GASQUET FENNER.
" MARTHA GASQUET WESTFELDT.

Sworn to and subscribed before me at New Orleans, Louisiana, on this, the 12th day of November, A. D. 1913.

[SEAL.] (Signed) FELIX J. PUIG,
Notary Public.

84 *Citation and Sheriff's Return Thereon.*

Filed November 17th, 1913.

State of Louisiana, Civil District Court for the Parish of Orleans in the City of New Orleans.

No. 106,435..

Interdiction of —— ——
versus
FERNAND V. GASQUET.

Mr. Fernand Vaughan Gasquet, New Orleans, La.:

You are hereby summoned to comply with the demand contained in the petition of which copy accompanies this citation, or deliver your answer to the same, in the office of the Clerk, of the Civil District Court for the Parish of Orleans, within ten days after the service thereof.

Witness the honorables, T. C. W. Ellis, Fred D. King, Geo. T. Theard, E. K. Skinner, Porter Parker, Judges of the said Court, this 13th day of November in the year of our Lord, 1913.

(Signed) WALTER T. BARRY,
Deputy Clerk.

Court House. Conti and Roy Streets.

Sheriff's Return.

Received Thursday Nov. 13th, 1913 and on the 13th day of November 1913, at 4.30 P. M., served a copy of the within Citation and accompanying Petition on Fernand Vaughan Gasquet defendant herein in person.

Return same day.

Sg. GEO J. MARIN,
Deputy Sheriff, of Orleans, Parish.

Sheriff's fees, $1.50.

85 *Rule to Show Cause Why Administrator Pro Tempore Should Not Be Appointed.*

Filed Nov. 17th, 1913.

Civil District Court, Division "E."

No. 106,435.

Interdiction of FERNAND VAUGHAN GASQUET.

On motion of J. C. and Thomas Gilmore, Attorneys for Fernand V. Gasquet, and on suggesting to the Court that a proceeding for the interdiction of said Fernand Vaughan Gasquet was filed in this Court on November 13th.: that previous to the filing of said petition for interdiction the said Fernand V. Gasquet had appointed Thomas Gilmore his agent and attorney in fact and attorney at law and the said Thomas Gilmore is acting in said capacities for said Fernand V. Gasquet, that pending the issue of the petition for interdiction it is necessary to appoint for the preservation of the movables and for the administration of the immovable estate of the said Fernand V. Gasquet, an administrator pro tempore, and that the said Thomas Gilmore, now acting as Agent and Attorney in Fact of said Fernand V. Gasquet should be appointed administrator pro tempore herein.

It is ordered by the Court that Mrs. Eveline Gasquet Fenner, Mrs. Martha Gasquet Westfeldt, George F. Lapeyre, and J. Martial Lapeyre show cause on the 21st day of November 1913, why Thomas Gilmore should not be appointed administrator pro tempore of Fernand V. Gasquet, with full power of administration of the business and affairs of said Fernand V. Gasquet, pending the issue of the petition for his interdiction.

Service accepted.

DENEGRE, LEOVY & CHAFFE,
Att'ys for petitioners.

86 *Judgment.*

No. 106,435.

Interdiction of FERNAND V. GASQUET.

The rule herein taken November 17th, 1913, by Messrs. J. C. and Thomas Gilmore, Attorneys for Fernand V. Gasquet, for the appointment of an administrator "Pro Tempore," having been heard and submitted on this day, and the Court considering the law and evidence to be in favor of plaintiffs in rule, for the reasons orally assigned:

It is ordered that the said rule be made absolute, ordering that Thomas Gilmore be appointed administrator "Pro Tempore" of Fernand V. Gasquet, with full power of administration of the busi-

ness and affairs of said Fernand V. Gasquet, and that letters as such issue to him, upon taking the oath prescribed by law, and upon his furnishing bond, with good and solvent surety and conditioned according to law, in the sum of $5000.00; said bond to be hereafter increased should the Court deem it necessary.

Judgment read and rendered in open Court November 21, 1913.

Judgment signed in open Court November 24th, 1913.

(Signed) GEO. H. THEARD, *Judge.*

87

Exception.

Filed November 24, 1913.

Civil District Court, Division "E."

No. 106,435.

Interdiction of FERNAND VAUGHAN GASQUET.

Now into the Honorable Court, through counsel undersigned, comes Fernand V. Gasquet, appearing solely for the purpose of excepting to the petition herein filed, and for exception says:

1. That the petition is too vague and uncertain and general and indefinite in its allegations to be safely answered and that exceptor is entitled to know specifically the infirmities from which it is alleged he is suffering and which it is alleged render him incapable of taking care of his person or administering his property.

2. That the petition discloses no right or cause of action.

Wherefore, exceptor prays that these exceptions be maintained and that plaintiff's suit be dismissed at their cost and for general relief.

(Signed.) J. C. & THOMAS GILMORE,
Att'ys for Exceptors.

The undersigned counsel for exceptor certify that the foregoing exceptions are filed in good faith and not for the purpose of delay.

(Signed) J. C. & THOMAS GILMORE.

Nov. 24, 1913.

88 *Oath of Administrator Pro Tempore.*

Filed November 25th, 1913.

No. 106,435.

State of Louisiana, Civil District Court for the Parish of Orleans, Division "E."

Interdiction of FERNAND VAUGHAN GASQUET.

Before me Paul A. Ducoing, Deputy Clerk of the Civil District Court for the Parish of Orleans, personally came and appeared Thomas Gilmore who solemnly swears that he will well and faithfully perform all and singular the duties of Administrator Pro Tempore of the Estate of Fernand V. Gasquet.

So Help — God.

Signed. THOMAS GILMORE.

Sworn to and subscribed before me, New Orleans, Nov. 24th,

(Signed.) P. A. DUCOING,
Deputy Clerk.

89 *Administrators' Bond.*

Filed November 24, 1913.

State of Louisiana, Civil District Court for Parish of Orleans, Division "E."

Know all men by these present-, That we, Thomas Gilmore as principal, and American Surety Company, of New York, State of New York, as surety, are held and firmly bound unto the Judges of the Civil District Court, for the Parish of Orleans, or to their successors in office, in the sum of Five Thousand Dollars, current money of the United States of America, which we promise to pay to them or their successors in office, for the faithful performance of which we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents, renouncing all benefit of division or discussion whatsoever.

Seal with our seals, this 21st, day of November, in the year of our Lord one thousand nine hundred and thirteen and 137 of the Independence of the United States of America.

The condition of the above obligation is such, That if the above bounden Thomas Gilmore, Administrator Pro Tempore of the estate of Fernand V. Gasquet, defendant in a proceeding for interdiction No. 106,435 of the docket of the Civil District Court does well and truly, according to law, administer the same, and further render a true, just and perfect account of all his actions and doings, when

thereunto lawfully required either by aforesaid Judges or their successors in office, agreeably to law, or by the heirs of the said deceased, or their lawful attorney or attorneys, then this obligation to be void, or else to remain in full force and virtue.

In witness whereof, We have hereunto set our hands and seals the day and year first above written in the presence of

(Signed) THOMAS GILMORE,
AMERICAN SURETY COMPANY OF NEW YORK.
(Signed) By CHAS. HOFFMAN,
Resident Vice President.

Attest.
[SEAL.] (Signed) G. T. BEAUREGARD,
Resident Assistant Secretary.

90 *Letters.*

Filed November 24th., 1913.

State of Louisiana, Civis District Court for the Parish of Orleans, Division "E."

No. 106,435.

Interdiction of FERNAND V. GASQUET.

This shall certify to all whom it may concern, That on the 21st day of November in the year of our Lord one thousand nine hundred and thirteen and the one hundred and 38th of the Independence of the United States of America an application was made to the Honorable George H. Theard, Judge of the Civil District Court for the Parish of Orleans, Division "E" by Thomas Gilmore praying that he might be appointed Administrator Pro Tempore of Fernand V. Gasquet.

Now, know ye, that Thomas Gilmore has been and he is hereby appointed Administrator Pro Tempore of the said Fernand V. Gasquet and that he has fulfilled all requisites of law.

Witness our hand and the seal of the said Civil District Court this 24th day of November in the year of our Lord One Thousand nine hundred and thirteen and in the one hundred and 38th of the Independence of the United States.

(Signed)
[SEAL.] (Signed) GEO. H. THEARD, *Judge.*
W. T. BARRY, *D'y Clerk.*

91 *Supplemental and Amended Petition.*

Filed December 23rd., 1913.

Civil District Court Division "E."

No. 106,485.

Interdiction of FERNAND V. GASQUET.

The supplemental and amended petition of Mrs. Eveline Gasquet Fenner, wife of Charles Payne Fenner, duly authorized; of Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt, duly authorized, and of George F. Lapeyre and J. Martial Lapeyre, plaintiffs in the above entitled cause,

With respect represents:

I.

That your petitioners reiterate all of the allegations of their original petition as fully as though incorporated herein.

II.

That Fernand Vaughan Gasquet is subject to an habitual state of insanity and madness although he at times, while under the influence of narcotic drugs, appears to have the possession of his reason.

III.

That heretofore in the proceedings entitled "State of Louisiana vs. Fernand V. Gasquet", No. 40,089 of the Criminal District Court for the Parish of Orleans, the Grand Jurors of the State of Louisiana, duly empaneled and sworn in and for the body of the Parish of Orleans, on an indictment of said Fernand V. Gasquet for shooting with intent to murder one Isaac Broad otherwise known as Isaac Brown returned not a true bill on the ground of insanity on the 7th day of June, 1912.

IV.

That thereupon the District Attorney for the Parish of Orleans on the 11th day of June 1912 represented to the said Criminal District Court, that under the Revised Statutes of 1870, Section
92 993, it is provided that whenever any person arrested to answer for any crime before any Court in this State, shall not be indicted by the Grand Jury by reason of insanity or mental derangement of such person, and the discharge or going at large of such person shall be deemed by the Court to be dangerous to the safety of the citizens or peace of the State, that the Court was authorized to commit such person to the State insane hospital, thereto be detained

until *be* be restored to his right mind; that said Fernand V. Gasquet had been declared insane and mentally deranged by the Grand Jury, that his discharge or going at large was dengerous to the safety of the Citizens and the peace of the State and that he should be committed to the Criminal Ward of the East Louisiana Hospital for the Insane, as is provided in the aforesaid section of the Revised Statutes and according to the terms of Act 264 of 1910 page 454.

V.

That said Criminal District Court set the said application or rule down for hearing on the 14th day of January 1912; that said Fernand V. Gasquet was duly notified and on the 14th day of June 1912 a hearing was had contradictorily with said Gasquet who was placed at the Bar of said Court in the custody of the Criminal Sheriff of the Parish of Orleans, and the hearing not being completed the same was continued to June 28th, 1912, and the Court having heard the evidence ordered the rule made absolute and further ordered that the defendant, Fernand Vaughan Gasquet, be committed to the Louisiana State Asylum for the Criminal Insane, at Jackson, Louisiana, until such time as he is cured of sound mind. All of which will more fully appear by duly certified copies of the Indictment, action of the Grand Jury thereon, and minute*d* of the said Criminal District Court, annexed to and made part hereof.

VI.

That for lack of proper accommodations in the Louisiana State Asylum for the Criminal Insane, at Jackson, Louisiana, said
93 Fernand V. Gasquet has remained in the custody of the Criminal Sheriff for the Parish of Orleans, and is now held in his custody.

VII.

That Fernand Vaughan Gasquet is addicted to the abuse of alcohol and addicted to narcotics; that he has a psychopathic constitution; that he has hardening of the arteries due to nephrites affecting his mental condition and suffers from delusions.

And that said Fernand Vaughan Gasquet is incapable of taking care of his person or administering his property, and it is therefore advisable and necessary that he be interdicted in accordance with law.

Wherefore petitioners pray that leave be granted to file this supplemental and amended petition, that the said Fernand Vaughan Gasquet be cited to appear and answer the same and that after due proceedings had there be judgment pronouncing his interdiction.

And petitioners pray for all general and equitable relief.

(Signed) DENEGRE, LEOVY & CHAFFE, *Att'y-*.

Martha J. Gasquet Westfeldt being duly sworn says that all of the allegations of fact made in the foregoing petition are true except as to

those allegations expressly made on information and belief, and that as to those affiant believes them to be true.

(Signed) MARTHA J. GASQUET WESTFELDT.

Sworn to and subscribed before me, at New Orleans, Louisiana, on this the 19th day of December, A. D. 1913.

(Signed) PIERRE D. OLIVIER,
Notary Public.

Order.

Let the foregoing supplemental and amended petition be filed. Dec. 24, 1913.

(Signed) GEO. H. THEARD, *Judge.*

94 *Answer to Original Petition and Supplemental and Amended Petition.*

Filed January 7th., 1914.

Civil District Court Parish of Orleans, Div. "E."

No. 106,435.

Interdiction of FERNAND V. GASQUET.

To the Honorable the Civil District Court in and for the Parish of Orleans, State of Louisiana:

Now, into Court, comes Fernand V. Gasquet, made defendant herein, and without waiving any of the exceptions heretofore filed by him, for answer to the original petition and the supplemental and amended petition of plaintiffs, with respect shows:

I.

That respondent denies all and singular the allegations of said original petition.

II.

For answer to Paragrapn I of the supplemental and amended petition, respondent denies all and singular the allegations thereof.

III.

For answer to Paragraph II of the supplemental and amended petition, respondent denies all and singular the allegations thereof.

IV.

Respondent admits the allegations of the third paragraph of the supplemental and amended petition.

V.

Respondent admits the allegations of the fourth paragraph of the supplemental and amended petition.

VI.

Respondent admits the allegations of the fifth paragraph of the supplemental and amended petition, and, in connection therewith, avers that, under art. 133 of the State Constitution of 1898, exclusive jurisdiction of interdiction suits was vested in the Civil Dis-
95 tric Court for the Parish of Orleans; that the said Criminal District Court was, therefore, absolutely without any jurisdiction ratione materiæ, and any finding of said Court, under the circumstances detailed in said supplemental and amended petition, was and is absolutely null and void ab initio, and, if carried into effect, would deprive respondent of his liberty, without trial by jury and without due process of law, in violation of Amendments 6 and 14 of the Federal Constitution and Articles 2, 6 and 9 of the State Constitution of 1898.

VII.

Respondent denies the allegations of the sixth paragraph of said supplemental and amended petition, for lack of information.

VIII.

Respondent denies the allegations of the seventh paragraph of said supplemental and amended petition, with the following qualifications:

Respondent admits that he takes small quantities of morphine for the purpose of allaying physical pain, under the direction of a competent and reputable physician of the City of New Orleans, but not in such quantities as to impair or affect his mind and render him incapable of taking care of his person or administering his property.

Further answering respondent avers:

IX.

That he is in full possession of all of his mental and physical faculties and is fully capable of both taking care of his person and administering his property.

X.

That Article 993 of the Revised Statutes of the State of Louisiana (1883) is absolutely null, void and of no effect, because, under Article 133 of the State Constitution of 1898, exclusive authority to interdict any person is vested in the Civil District Court for the Parish of Orleans, and because said article of the Revised Statutes

provides for giving effect to the ex parte finding of an in-
96 quisitorial body without hearing the party whose rights of liberty and property and status in society are by said Grand Jury determined without a judicial hearing, without trial by jury and without due process of law, in violation of the bill of rights of the State Constitution and Amendments 6 and 14 of the Federal Constitution.

Wherefore, respondent prays that this suit may be dismissed at plaintiffs' cost.

And for all general and equitable relief.

(Signed) WM. WINANS WALL,
" J. C. & THOMAS GILMORE,
Attorneys.

Affidavit.

Personally came and appeared before me, the undersigned authority, Fernand V. Gasquet, of age and a resident of the*i* City, who being first by me duly sworn, deposes and says: that he is the defendant in the above and foregoing suit, and that all the allegations set forth in the above answer are true and correct.

(Signed) FERNAND VAUGHAN GASQUET.

Sworn to and subscribed before me at New Orleans, La., this Sixth (6th) day of January, 1914.

[SEAL.] (Signed) CHARLES SCHNEIDAU,
Notary Public.

97 *Petition.*

Filed February 3rd, 1914.

Civil District Court, Parish of Orleans, Div. "E."

No. 106,435.

Interdiction of FERNAND V. GASQUET.

To the Honorable the Civil District Court in and for the Parish of Orleans:

The petition of Thomas Gilmore, Administrator pro tempore of said Fernand V. Gasquet, with respect, shows:

I.

That to properly defend the interdiction proceedings instituted herein against said Fernand V. Gasquet, to whose estate petitioner has been appointed and qualified as Administrator pro tempore, it will be necessary to employ medical experts and alienists to testify as to the sanity of said Fernand V. Gasquet.

II.

That petitioner should be authorized to employ, on behalf of said Fernand V. Gasquet, such medical experts and alienists as may be necessary to properly defend this suit.

Wherefore, petitioner prays that he be authorized to employ whatever medical experts and alienists may, in his opinion, be necessary to properly defend said interdiction suit.

And for all costs and general relief.

(Signed) WM. WINANS WALL, *Att'y.*

Affidavit.

Personally came and appeared before me, the undersigned authority, Thomas Gilmore, of age and of this Parish and State, who being first by me duly sworn, deposes and says: That he is the petitioner in the above and foregoing petition, and that all the
98 facts and allegations therein contained are true and correct.

(Signed) THOMAS GILMORE.

Subscribed and sworn to before me at New Orleans, La., this 2nd day of February, 1914.

[SEAL.] (Signed) CHARLES SCHNEIDAU,
Notary Public.

Order.

It is ordered that Thomas Gilmore, Administrator pro tempore of the Estate of Fernand V. Gasquet, be and he hereby is authorized to employ such medical experts and alienists to testify herein on behalf of said Fernand V. Gasquet as, in the opinion of said Administrator pro tempore, may be necessary.

New Orleans, La., February 3rd. 1914.

(Signed) GEO. H. THEARD, *Judge.*

99

Motion to Discontinue.

Filed April 22nd, 1914.

Civil District Court, Parish of Orleans.

No. 106,435.

Interdiction of FERNAND VAUGHAN GASQUET.

On motion of Denegre, Leovy & Chaffe, attorneys for plaintiffs, and

On suggesting to the court its ruling that George G. Westfeldt and Charles Payne Fenner cannot be sworn or heard as witnesses in this case because they are the husbands of two of the plaintiffs, and

On further suggesting that the said Westerfeldt and the said

Fenner are the brother-in-law of the defendant in interdiction, acquainted with him and his life and actions during the past several years, and that their testimony is necessary in order to fully advise the court of defendant's life, condition and actions during the past several years, that this is a case involving not only the interests of the plaintiffs, as relations of defendant, but the community at large as well as the best interests of defendant, and that for the purpose of securing the testimony of the aforesaid Westfeldt and Fenner, the plaintiffs Mrs. Evelyn Gasquet Fenner, Wife of Charles P. Fenner, and Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt, duly authorized, desire to discontinue as plaintiffs herein.

It is ordered that the discontinuance of this suit by Mrs. Evelyn Gasquet Fenner, wife of Charles P. Fenner, and Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt, as plaintiffs herein be and the same *be and the same* is hereby entered and this suit be discontinued at to them.

(Signed) E. K. SKINNER, *Judge.*

100 *Judgment.*

Civil District Court, Division "C."

No. 106,435.

Interdiction of FERNAND VAUGHAN GASQUET.

This cause having been argued, and submitted to the Court on the 2nd inst., and the Court having taken time to consider and being duly advised, and by reason, of the law and evidence being in favor of plaintiffs and against defendant, and for reasons orally assigned.

It is ordered, adjudged and decreed that there be Judgment in favor of plaintiffs and against defendant Fernand Vaughan Gasquet, decreeing that said Fernand Vaughn Gasquet, is incapable of taking care of his person and administering his estate, and pronouncing his interdiction; costs of this proceeding to be paid out of the estate of said defendant.

Judgment read and rendered in open Court of this 15th day of June, 1914.

Judgment read and signed in open Court on this 19th day of June, 1914.

(Signed) E. K. SKINNER, *Judge.*

101 *Petition and Order for Appointment of Curator.*

Filed April 1st, 1915.

Civil District Court, Division "C."

No. 106,435.

Interdiction of FERNAND V. GASQUET.

To the Honorable the Civil District Court for the Parish of Orleans.

The petition of George F. Lapeyre and J. Martial Lapeyre, petitioners herein, respectfully shows:

That the judgment of interdiction, entered herein by this Court, has been confirmed by the Supreme Court of this State, and the rehearing therein applied for refused on Monday March 22, 1915.

It is now necessary that a curator be appointed to the person and estate of the interdict, and for that purpose a family meeting should be called as required by law.

Petitioners show that the following are the nearest relatives, connections and friends of the interdict residing within the prescribed circle, viz: your petitioners, George F. Lapeyre and J. Martial Lapeyre, maternal uncles; Philip Avegno, Anatole Avegno and Toutant Avegno, first cousins in the maternal line; Charles P. Fenner and George G. Westfeldt, brothers-in-law; George Grima, first cousin by marriage, and Col. William G. Vincent, a life long friend of the interdict and of his parents.

Wherefore, petitioners pray that a family meeting be held and convened on behalf of the interdict, Fernand V. Gasquet before Felix J. Puig, notary public for the purpose of advising and recommending the proper person to be appointed curator to the interdict, and petitioners pray the selection and appointment by the Court of the persons to compose the family meeting.

(Signed) DENEGRE, LEOVY & CHAFFE, *Att'ys.*

102 *Order.*

The foregoing petition considered it is ordered that a family meeting be held and co-vened on behalf of the interdict, Fernand V. Gasquet, before Felix J. Puig, notary public, according to law, and as prayed for in the foregoing petition.

Said family meeting to be composed of the named persons or any five of them; viz., as above except plaintiffs in suit.

Sept. 1st, 1915.

(Signed) E. K. SKINNER, *Judge.*

103 *Motion to Rescind Order, and Sheriff's Return Thereon.*

Filed Apr. 5, 1915.

Civil District Court, Division "C."

No. 106,435.

Interdiction of FERNAND VAUGHAN GASQUET.

On motion of Fernand Vaughan Gasquet, through J. C. & Thos. Gasquet and Wm. Winans Wall, his attorneys, and on suggesting to the Court that an order entered exparte to this Court in the above numbered and entitled proceeding on April 1, 1915, appointing certain relatives and friends of the said Fernand Vaughan Gasquet to compose a family meeting to recommend the appointment of a curator;

And on further suggesting to the Court that this Court was and is without jurisdiction to grant any orders in this case, and particularly the order above referred to, inasmuch as an appeal had been taken from this Court to the Honorable the Supreme Court of Louisiana, that the judgment of the Supreme Court of Louisiana was not final and that a writ of error to operate as a supersedeas had been allowed from the Supreme Court of the United States by the Honorable the Chief Justice of said Supreme Court of Louisiana prior to the date of said order; that the mandate of the Supreme Court of Louisiana has not been sent to this Court and this Court has never been reinvested with jurisdiction of the case:

It is ordered by the Court that George F. Laperye and J. Martial Lapeyre show cause on Friday, the 9th day of April 1915, why the order of April 1, 1915, appointing certain relatives and friends named in their petition herein to compose a family meeting should not be rescinded.

(Signed) E. K. SKINNER, *Judge.*

104 *Sheriff's Return.*

Received Tuesday Apr. 6, 1915 and on the 6th, day of April 1915 served copy of the within Rule on J. Martial Lapeyre mentioned herein by leaving the same at his domicile 1725 Explanade Street in the hands of Andre Lapeyre his son a person apparently over the age of 14 years living and residing in said domicile, whose name and other facts connected with this service I learned by interregating the said Andre Lapeyre his son the said J. Martial Lapeyre mentioned being absent from his domicile at time of said service.

Returned same day.
Sheriff's fees 50cts.

(Signed) LOUIS PILLOT,
Deputy Sheriff of Orleans Parish.

On the 6th, day of April 1915, served a copy of the within Rule on George F. Lapeyre mentioned by leaving the same at his domicile 3924 St. Charles Street in the hands of Josephine Page house girl a person apparently over the age of 14 years living and residing in said domicile, whose name and other facts connected with this service I learned by interregating the said Josephine Page house girl, the said George F. Lapeyre mentioned herein being absent from his domicile at time of said service.

Returned same day.

Sheriff's fees .50 cts.

(Signed) ED. GUENARD,
Deputy Sheriff of Orleans Parish.

105 *Judgment on Rule to Rescind.*

Civil District Court, Division "C."

No. 106,435.

Interdiction of FERNAND VAUGHN GASQUET.

Judgment on Rule to Rescind.

The Rule herein taken on the 5th day of April, 1915, through J. C. and Thos. Gilmore, and Wm. W. Wall, Esqrs., Counsel for the Defendant to procure the rescinding of the order of this Court herein of date April 1st, 1915, came on for trial on this day:—There being present:—Messrs. J. C. Gilmore and Wm. W. Wall, Attorneys for mover; and George Denegre, Esqr., of Counsel for the Defendants in Rule. When, after hearing pleadings, the evidence and arguments of Counsel, the Court being of opinion that the law and the evidence are in favor of said Mover, Fernand Vaughn Gasquet, and against Defendants in Rule,

It is ordered, adjudged and decreed that there be Judgment herein making the said Rule of April 5th, 1915 absolute: and accordingly ordering that the former order of this Court, dated April 1st, 1915, by which were appointed certain relatives and friends of the said Gasquet, to compose a family meeting, be and is now Rescinded.

Judgment read and rendered in open Court April 9th, 1915.

Judgment read and signed in open Court on April 15th, 1915.

(Signed) E. K. SKINNER, *Judge.*

106 *Motion of Appeal.*

Filed June 19th, 1914.

Civil District Court, Parish of Orleans, Division "C."

No. 106,435.

Interdiction of FERNAND V. GASQUET.

On motion of defendant, through Wm. Winans Wall and J. C. & Thos. Gilmore, his attorneys, and on suggesting to the Court that mover is aggrieved by the judgment herein rendered on the 15th day of June, 1914, and signed on the 19th day of June, 1914, in favor of plaintiffs; that said judgment is contrary to the law and the evidence, and that mover desires to appeal therefrom to the Supreme Court of the State of Louisiana:

It is ordered that an appeal, in accordance with law, be granted to the said defendant, returnable to the Supreme Court of the State of Louisiana, on the 24th day of July, 1914, upon mover furnishing bond, with good and solvent security, in the sum of Two Hundred & Fifty Dollars, conditioned as the law directs.

(Signed) E. K. SKINNER, *Judge.*

Appeal Bond.

Filed June 19th, 1914.

State of Louisiana, Civil District Court for the Parish of Orleans, Division "C."

No. 106,435.

107 Know all men by these presents, That, we Fernand Vaughon Gasquet as principal and Hamilton P. Jones as surety are held and firmly bound unto Thomas Connell, Clerk of the Civil District Court, for the Parish of Orleans, his successors, executors, administrators and assigns, in the sum of Two Hundred and Fifty ($250.) Dollars, for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents sealed with our seal, and dated in the City of New Orleans, on this Nineteenth day of June in the year of our Lord one thousand nine hundred and fourteen.

Whereas, the above bounden Fernand Vaughan Gasquet *have* this day filed a motion of appeal from a final judgment rendered against him in the suit for his interdiction entitled Interdiction of Fernand Vaughan Gasquet, No. 106,435 of the Civil District Court for the Parish of Orleans, on the fifteen day of June 1914, and signed on the Nin-teenth day of June 1914.

Now the condition of the above obligation is such, That the above

bound Fernand Vaughan Gasquet shall prosecute his appeal, and shall satisfy whatever judgment may be rendered against him or that the same shall be satisfied by the proceeds of his estate real or personal, if he be cast in the appeal; otherwise that the said surety Hamilton P. Jones shall be liable in his place.

Signed, sealed and delivered in the presence of

(Signed) FERNAND VAUGHAN GASQUET. [SEAL.]
(Sg.) HAMILTON P. JONES. [SEAL.]

108 Civil District Court, Parish of Orleans, State of Louisiana.

I, W. W. Cummings, Deputy Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that the annexed twenty-four pages do contain a true and complete copy of the record, omitting the testimony, depositions and documentary evidence, in the matter entitled "Interdiction of Fernand Vaughan Gasquet" No. 106,435 of the docket of this Honorable Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, at the City of New Orleans, on the 26th. day of November, in the year of our Lord, One Thousand Nine Hundred and Fifteen, and in the year of the Independence of the United States of America the One Hundred and Fortieth.

[SEAL.] (Signed) W. W. CUMMINGS,
Deputy Clerk.

Documentary 10c Stamp Cancelled.

109 UNITED STATES OF AMERICA,
State of Louisiana:

Civil District Court for the Parish of Orleans.

I, Thomas Connell, Clerk of the Civil District Court for the Parish of Orleans,

Do hereby certify, that the annexed twenty-four pages do contain a true and complete copy of the record, omitting the testimony, depositions and documentary evidence, in the matter entitled "Interdiction of Fernand Vaughan Gasquet" No. 106,435 of the docket of this Honorable Court.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Court, at the city of New Orleans, on this 29th day of November, in the year of our Lord, one thousand nine hundred & fifteen and in the 140th year of the Independence of the United States of America.

[SEAL.] (Signed) J. CONNELL, *Clerk.*

I, Thomas C. W. Ellis, presiding Judge of the Civil District Court for the Parish of Orleans, do hereby certify that Thomas Connell is the Clerk of said Court, that the same is a Court of Record, having probate jurisdiction, and that the signature, Thomas Connell, Clerk, to the foregoing certificate is in the proper handwriting of him, the said Thomas Connell, clerk; to his official act as such, full

faith and credit are due and owing; and I do further certify that his attestation in in due form of law.

Given under my hand, at the City of New Orleans, on the 29th day of November in the year of our Lord one thousand nine hundred and fifteen.

[SEAL.] (Signed) THOMAS C. W. ELLIS, *Judge.*

110 I, Thomas Connell, Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that Thomas C. W. Ellis, whose genuine signature appears to the foregoing certificate, is now, and was at the time of signing the same, presiding Judge of the Civil District Court for the Parish of Orleans, duly appointed and commissioned and qualified as such, and that said attestation is in due form of law.

Witness my hand and the seal of said Court, this 29th day of November 1915.

[SEAL.] (Signed) T. CONNELL, *Clerk.*

111 *Will of Louise L. Gasquet, etc.*

Filed January 26th, 1916.

Ne Varietur.

NEW ORLEANS, Nov. 12, 1913.

Sg. Geo. H. Theard, Judge..

Will of Louise L. Gasquet.

Revoking all former wills, I declare this to be my last will and testament.

To each of my good children viz:

Elizabeth Fenner, Louise Grina, George F. Lapeyre, Ethel Jane Westfeldt, Philippe Avegno, Jean Lapeyre, Lillian Kemrad I bequeath one thousand Dollars each.

All my jewel-ery I bequeath as an extra portion to my daughters Eveline and Martha, I wish however that a piece of that jewel-ery be given to my sister Corine as a souvneir from me.

My silver marked A. Lapeyre I bequeath to my brother George.

My silver marked F. Lapeyre to my brother Martial.

To my faithful maid Annie one thousand Dollars, in appreciation of her devoted services.

To the Sisters of Saint Clares five hundred dollars.

The residue of the property which I may die possessed of I bequeath to my three children share and share alike Eveline G. Fenner, Martha G. Weltfeldt and Fernand V. Gasquet.

I appoint as my executor with seizing and without bond my son in law Charles Payne Fenner.

This wholly written dated and signed by me on the 8th day of January of the year 1913.

(Signed) LOUISE L. GASQUET,
New Orleans, La.

Ne Varietur.
New Orleans, Nov. 12, 1913.
(Sg.) GEO. H. THEARD, *Judge.*

A true copy.
[SEAL.] (Signed) W. T. BARRY, *D'y Cl'k.*

112 *Codicil.*

Ne Varietur.

N. O., Nov. 12, 1913.

Sg. Geo. H. Theard, Judge.

Codicil to My Will Dated January 8th, 1913.

In the partition of my estate I desire that there shall be collected from my son F. V. Gasquet the sum of $4,953 *dollars* for the year 1912, representing the large expenditures which I Have made for physicians, nurses, besides the allowance for his support and for the first six months of the year 1913, $2,474 up to date for the same expenditures.

Written dated and signed by me the 12th of June, 1913.
New Orleans, La.
Sg. LOUISE L. GASQUET.

Ne Varietur.
N. O., Nov. 12th, 1913.
Sg. GEO. H. THEARD, *Judge.*

A true copy.
[SEAL.] (Signed) W. T. BARRY, *D'y Cl'k.*

113 Be it remembered, That on this 12th day of November in the year of our Lord one thousand nine hundred and thirteen and on the 138th of the independence of the United States of America.

Upon appplication of Mrs. Eveline Gasquet Fenner et al. and pursuant to my decree bearing even date herewith,

Before me George H. Theard, Judge of the Civil District Court for the Parish of Orleans, personally came and appeared J. M. Lapeyre and Geo. F. Lapeyre witnesses, who being duly sworn, were by me presented with a sealed Packet, sealed and closed with muscilage and bearing the following superscription, to-wit: "Last will and Codicil of Louise L. Gasquet to be opened only after her death", did declare and say that the said superscription is in the proper handwriting of the late Louise L. Gasquet.

Whereupon the said packet being by me broken open, was found to contain an instrument of writing written on two sides of a double sheet of legal cap paper; and on one side of a double sheet of letter paper, beginning with the following words: Will of Louise L. Gas-

quet Revoking all" "Codicil to my will dated January 8th 1913 In the partition of my" and ending with the following : "on this 8th day of January of the year 1913. Louise L. Gasquet New Orleans, La." the 12th of June 1913 New Orleans, La. Louise L. Gasquet" and purporting to be her -olographic last will and testament, & codicil which being by me exhibited to the aforesaid witnesses, was by them recognized and declared to be entirely written dated and signed by the testatrix the said Louise L. Gasquet which they attest as having often seen her write and sign during her lifetime; and the said appear-s did hereunto set their hands after due reading thereof, on the day, month and year first above written.

(Signed) J. M. LAPEYRE.
" GEO. F. LAPEYRE.

Sworn to and subscribed before me this Twelfth day of November 1913.

(Sg.) GEO. H. THEARD, *Judge.*

114 Whereupon I, the said Judge, do hereby declare the said -olographic last will and testament & Codicil to be truly proved, and having read the said will and codicil in a loud and distinct voice to the aforesaid witnesses, and in the presence of Messrs. A. H. Fleming & R. E. Saucier all present in Court, and after having signed the said will & Codicil Ne Varietur at the beginning and end thereof do now order the same to be deposited and recorded in the office of the Clerk of the Civil District Court for the Parish of Orleans, and that the execution thereof take place according to law.

Done in the Civil District Court for the Parish of Orleans, this 12 day of November 1913.

(Sg.) GEO. H. THEARD, *Judge.*
(Sg.) A. H. FLEMING.
" R. E. SAUCIER.

A true copy.
[SEAL.] (Signed) W. T. BARRY, *D'y Cl'k.*

115 The State of Louisiana, Civil District Court for the Parish of Orleans, Division "E."

To all to whom these Presents may come, Greeting:

Whereas, Charles Payne Fenner named and appointed testamentary executor of the last will and testament of the late Louise L. Gasquet, deceased has applied to the Civil District Court for the Parish of Orleans by Petition praying said Court to grant letters testamentary therein.

Now know ye, That the said Charles Payne Fenner is hereby authorized and empowered to collect all the goods and effects which were of said late Louise L. Gasquet deceased, and make a just inventory thereof, and all other lawful acts to do and perform as testamentary executor of the said last will and testament.

Witness our hand and the Seal of said Court, at the City of New Orleans, this 13th., day of November in the year of our Lord one thousand nine hundred and thirteen and the 138th of the independence of the United States of America.

(Signed) GEO. H. THEARD, *Judge.*
(Signed) W. T. BARRY, *D'y Cl'k.*

A true copy.
[SEAL.] (Signed) W. T. BARRY, *D'y Cl'k.*

116 *Opinion.*

Filed July 21, 1916.

United States District Court, Eastern District of Louisiana.

No. 15244.

FERDINAND VAUGHAN GASQUET
vs.
CHARLES PAYNE FENNER, Testamentary Executor, etc., et als.

In this case the bill alleges that plaintiff, Fernand Vaughan Gasquet, is a citizen of Tennessee and sui juris; that he and his two sisters, Martha Gasquet, wife of George G. Westfeldt, and Evelyn Gasquet, wife of Charles Fenner, are the sole and residuary legatees of their mother, Mrs. Louise Lapeyre Gasquet; that Charles Payne Fenner is the executor of his mother's will and in full possession of her estate under orders of the Civil District Court for the Parish of Orleans, Louisiana; that the estate amounts to more than $600,000 and has been fully administered; that he is unwilling to own the residuum in indivision with his sisters and is entitled to have one third of said estate turned over to him. On these allegations he prays for an accounting from the executor and for a partition as against his co-heirs.

The answer sets the interdiction of plaintiff, denies he is a citizen of Tennessee, and that he is sui juris. It admits the value of the estate and plaintiff's interest in same and that the debts have been paid and special legacies delivered, but denies the estate has been fully administered on the ground that the executor cannot file his account because no curator has been appointed to the plaintiff. The answer denies that plaintiff has the right or capacity to de-
117 mand an accounting and a partition.

The material facts are these. Plaintiff was charged with wilfully shooting and wounding his mother's coachman. Because of his alleged insanity, the grand jury refused to indict him, and in a proceeding before the Criminal District Court for the Parish of Orleans, Louisiana, he was adjudged insane and committed to the state insane asylum, but remained in the custody of the sheriff and was placed in Touro Infirmary in charge of a deputy. Plaintiff's

sisters and other relatives filed proceedings against him for his interdiction alleging his insanity and also his excessive use of alcohol and narcotic drugs. After a trial at which he was present and was represented by counsel, there was a judgment as follows:

"It is ordered, adjudged and decreed that there be judgment in favor of plaintiffs and against defendant Fernidand Vaughan Gasquet, decreeing that said Ferdinand Vaughan Gasquet, is incapable of taking care of his person and administering his estate, and pronouncing his interdiction."

From this judgment he appealed to the Supreme Court of Louisiana. While the appeal was pending he applied to the Court of Appeals for the Parish of Orleans for a writ of habeas corpus. The writ was granted and he was released from custody. On appeal the judgment of interdiction was affirmed, 136 La. 957, the Supreme Court incidentally holding *the* the Court of Appeals was without jurisdiction to set aside the commitment of the Criminal District Court. Plaintiff then sued out a writ of error to the Supreme Court of the United States, and this is still pending. Early in the proceedings, on his own motion, an administrator pro tempore was appointed. This officer, in Louisiana, has the temporary administration of the affairs of one against whom interdiction proceedings are pending but not the custody of his person. After the final judgment of the Supreme Court of Louisiana, application was made by his relatives for the appointment of a curator to the plaintiff but this he successfully resisted because of the writ of error pending
118 in the United States Supreme Court. While the case was pending in the Supreme Court of Louisiana, on an application for a rehearing, plaintiff moved to Memphis, Tennessee, and filed an ex parte petition in the Probate Court of Shelby County praying for a jury to determine his sanity. On this petition, after reciting the proceedings in the courts of Louisiana, a judgment was rendered as follows:

"It is therefore ordered, adjudged and decreed that said verdict of the jury be and the same is hereby confirmed and it is further adjudged, decreed and declared by the Court that said Fernand Vaughan Gasquet is a person of sound mind and capable and competent to control himself and his property, and that he is entitled to settlement from any and all persons having control, charge or management of any part of his estate, real or personal and disability of the said Gasquet by reason of the proceedings against him hereinbefore mentioned being hereby removed."

It is contended by the plaintiff that he was not insane when he removed to Tennessee and that he acquired a domicile in that state; that the Tennessee court had jurisdiction, and its judgment declaring him to be a person of sound mind is entitled to full faith and credit and is conclusive of his right to stand in judgment in this case. The defendants rely with equal confidence on the judgment of the Louisiana Court. The question presented in perplexing to say the least, and neither the adjudged cases nor the text writers throw any appreciable light on the subject. There are cases holding that an interdict may acquire a new domicile and probably

plaintiff had sufficient mental capacity at times to do so. If he did acquire a domicile in Tennessee, the Probate Court of Shelby County apparently had jurisdiction to declare him sane. But in the view I take of the case, these questions are immaterial and I do not pretend to decide them. Conceding, for the sake of argument, that the plaintiff had acquired a domicile in Tennessee and that the Probate Court of Shelby County had jurisdiction over his person and authority under the law of Tennessee to declare
119 him sane, nevertheless his capacity to sue in Louisiana is not completely established by the judgment rendered. The law of Louisiana recognizes that insanity may be only temporary but yet provides that interdiction having been once decreed, a person interdicted cannot resume the exercise of his rights until after a definitive judgment repealing the interdiction. Arts. 420 and 421, Civil Code. Apparently the Supreme Court of Louisiana has had no occasion to construe these articles, which in not surprising in view of their plain terms. The situation therefore is this: The plaintiff is *judiciously* sui juris in Tennessee and not sui juris in Louisiana. One judgment has as much force and effect as the other for no matter what faith and credit the Tennessee judgment is entitled to as declaring plaintiff of sound mind, it could not have the extra territorial effect of annulling the Louisiana judgment or interdiction, and a proceeding will be necessary in the court that pronounced the interdiction to set it aside. Again conceding, for the sake of argument, but without so deciding, that the Tennessee judgment is conclusive proof of plaintiff's sanity, it is apparent that the Supreme Court of Louisiana affirmed the judgment of interdiction on the theory that plaintiff was incapable of taking care of himself and his estate because of his excessive use of drugs and alcohol. With regard to this aspect of his case, he might be considered sane and yet, under the law of Louisiana, subject to interdiction. There is no dispute as to plaintiff's interest in his mother's succession and the amount due him, and therefore nothing for the court to pass upon in that respect. Partitions in matters of this kind, in Louisiana, are usually made by notarial act through a notary appointed by the court. This could not take place until the executor had filed his account. It is not alleged or suggested that the executor has been guilty of any breach of trust, or even negligence, in performing his duties. The executor, the defendant herein, is an
120 officer of the Louisiana probate court and that court is the proper tribunal to require him to file an account of his administration. The administration is not ended and there is some doubt as to the jurisdiction of this court to entertain this suit at this time. Waterman vs. Canal Bank, 215 U. S. 45. But be that as it may, it is well settled that in matters of this kind, Federal courts administer the laws of the states and are bound by the same rules that govern the state tribunals. Security Trust Company vs. National Bank, 187 U. S. 211.

Plaintiff would have no standing in the state courts, though his sanity be conceded, either to require an accounting or to demand a

partition, until the judgment of interdiction had been set aside in the proper proceeding by the court which rendered it.

The bill will be dismissed without prejudice.

121 *Decree.*

Filed July 24th, 1916.

United States District Court, Eastern District of Louisiana, in Equity.

No. 15244.

FERNAND VAUGHAN GASQUET
versus
CHARLES PAYNE FENNER, Testamentary Executor of the Estate of Mrs. Louise Lapeyre Gasquet, Deceased, et als.

Decree.

This cause came on at a former day to be heard upon the question of jurisdiction raised by the defendants in their answer on file, and also upon the merits, and after hearing the pleadings and the evidence offered on behalf of the respective parties and arguments of counsel, the cause was submitted, when the Court took time to consider;

Whereupon, and on due consideration thereof, and for the written reasons of the Court on file herein,

It is ordered, adjudged and decreed by the Court that the bill of complaint of Fernand Vaughan Gasquet, complainant herein, be, and the same is hereby, dismissed, at complainant's costs, without prejudice to plaintiff's rights to apply to the Civil District Court for the Parish of Orleans to set aside the judgment of interdiction, and thereafter to renew his application in this Court.

(Signed) RUFUS E. FOSTER, *Judge.*

New Orleans, La., July 24, 1916.

122 *Motion for New Trial.*

Filed July 28th., 1916.

United States District Court, Eastern District of Louisiana, New Orleans Division.

No. 15,244.

FERNAND VAUGHAN GASQUET.
vs.
CHARLES PAYNE FENNER, Testamentary Executor, Etc., et als.

On motion of Fernand Vaughan Gasquet, through his Attorneys, J. C. & Thos. Gilmore and Wm. Winans Wall, and on suggesting to the court that there is error to mover's prejudice in the opinion and decree herein rendered and that mover is aggrieved thereby and that the said opinion and decree are contrary to law and the evidence, in this:

1. That the Court erred in assuming that the judgment of the Supreme Court of Louisiana is a final judgment of interdiction. The State Court declined to give the judgment effect as a final judgment, pending the writ of error from the Supreme Court of the United States. The judgment of the State Court declining to appoint a curator in res adjudicate on the subject of final-ty of the judgment. The State law and jurisprudence interpreting it do not warrant the construction placed by this Court on the interdiction suit. Civil Code 398, 400, 401; De Lesdernier v. De Lesdernier, 45 A. 1366; In re Jones, 116 La. 776;

2. That the Court erred in declining to give effect to the judgment of the Court of Appeals of Louisiana, declaring plaintiff sane at a date subsequent to the judgment of interdiction. The judgment, of the Court of Appeal is a final judgment. It was not before the Supreme Court of Louisiana on appeal or any process of review and was not subject to review by the Supreme Court and the Supreme Court could not hold that the Court of Appeal was without
123 jurisdiction to set aside the commitment of the Criminal District Court. The solemn judgment of a Court of competent jurisdiction, on habeas corpus, unappealed from, and not subject to review in any particular, is res adjudicata of the subject contemplated and can not be ignored or submitted to criticism, altogether obiter and of no effect. The right to the writ of habeas corpus is guaranteed by the Federal Constitution, Art. 1 Sec. 9 "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." This Court erred, therefore, in interpreting the opinion of the Supreme Court of Louisiana as "holding that the Court of Appeal was without jurisdiction to set aside the commitment of the Criminal District Court." This Honorable Court, we respectfully submit, should have given effect to the judgment of the Court of Appeal.

3. That this Court erred in declining to give effect to the judgment of the Probate Court of Shelby County Tennessee, decreeing plaintiff same and capable of managing his person and estate. Under Article 4 Sec. 1 of the Constitution of the United States that judgment is entitled to full faith and credit throughout the Union. See authorities p. p. 13, 14, et seq., Plaintiff's original brief.

4. That this Court erred in declining to enforce Art. 4 Sec. 2 of the Constitution of the United States, securing to the citizens of one State the privileges and immunities of the several States. Plaintiff's original brief, p. p. 14, 15, Authorities cited.

5. That this Court erred in finding a conflict between an interdiction proceeding pending, in no sense final, and a final judgment of a Court of competent jurisdiction. Even if the Louisiana interdiction proceeding be final, there is no conflict. That proceeding relates to a status found by the Louisiana Court to exist in May 1914. The Tennessee judgment does not attempt to annul or impair the effect of the Louisiana judgment. Reference to the pleadings in the Tennessee Court will disclose that the proceedings in Louis-
124 iana were frankly alleged and admitted. The Tennessee judgment is predicated on facts existing at a time subsequent to the Louisiana judgment. Plaintiff's status has been determined by the judgment of the Probate Court of Tennessee. He has been adjudged competent to manage his person and estate. His right to a partition can not be denied nor the guarantees of the Federal Constitution defeated, because of the pendency of an interdiction proceeding relating to a period long prior to the judgment of the Probate Court of Tennessee.

"The equity jurisdiction and remedies conferred by the Constitution and Statutes of the United States can not be limited or restrained by State legislation and are uniform throughout the different States of the Union. Hence the Circuit Court for any district, embracing a particular State will have jurisdiction of an equity proceeding against an administrator, * * * notwithstanding that by a peculiar structure of the State probate system such a proceeding could not be maintained in any Court of the state.

Payne v. Hook, 7 Wall. 429.

It is ordered by the Court that Charles Payne Fenner, Testamentary Executor of Mrs. Louise Lapeyre Gasquet, Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt, and Mrs. Evelyn Gasquet Fenner, wife of Charles Payne Fenner, defendants herein, show cause on the 28th day of July 1916, why a new trial should not be granted Plaintiff, Fernand Vaughan Gasquet.

Service accepted.

(Signed) DENEGRE, LEOVY & CHAFFE, *Att'ys.*

July 27/16.

125 *Order Overruling Motion for Rehearing.*

Extract From the Equity Journal.

May Term, 1916.

NEW ORLEANS, Friday, July 28th, 1916.

Court met pursuant to adjournment.

Present: Hon. Rufus E. Foster, Judge.

No. 15244.

FERNAND VAUGHAN GASQUET
vs.
CHARLES PAYNE FENNER, Testamentary Executor, etc., et als.

This cause came on to be heard upon the motion, this day filed by the plaintiff, for a new trial herein, and was submitted by the solicitors for the plaintiff;

Whereupon, and on due consideration thereof, it is now ordered by the Court that the said motion for a new trial herein be, and the same is hereby overruled, and that a new trial in this cause be refused.

126 *Petition for Appeal.*

Filed August 14th., 1916.

United States District Court, Eastern District of Louisiana, New Orleans Division, In Equity.

No. 15244.

FERNAND VAUGHAN GASQUET
vs.
CHARLES PAYNE FENNER, Testamentary Executor, and Mrs. MARTHA GASQUET WESTFELDT, et als.

Fernand Vaughan Gasquet, Plaintiff conceiving himself to be aggrieved by the decree made and entered on the 24 day of July 1916, in the above entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, which is filed herewith, and he prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

(Signed) J. C. & THOS. GILMORE,
" WM. WINANS WALL,
Attorneys for Fernand Vaughan Gasquet, Plaintiff, Appellant.

Order.

The appeal herein prayed for is allowed on petitioner furnishing bond in the sum of One Hundred dollars.

(Signed) RUFUS E. FOSTER, *Judge.*

New Orleans, Aug. 14, 1916.

127 *Assignment of Errors.*

Filed August 14th., 1916.

United States District Court, Eastern District of Louisiana, New Orleans Division, In Equity.

No. 15244.

FERNAND VAUGHAN GASQUET
vs.
CHARLES PAYNE FENNER, Testamentary Executor, and Mrs. MARTHA GASQUET WESTFELDT, et als.

Assignment of Errors.

And now comes the Plaintiff, Fernand Vaughan Gasquet, by his Attorneys, J. C. & Thos. Gilmore and William Winans Wall, and says that the decree in the above numbered and entitled cause is erroneous and against the just rights of said Plaintiff, for the following reasons:

First. Because the Court erred in assuming that the judgment of the Supreme Court of Louisiana is a final judgment of interdiction. The State Court declined to give the judgment effect as a final judgment, pending the writ of error from the Supreme Court of the United States. The judgment of the State Court declining to appoint a curator and to give final effect to the judgment of interdiction in res adjudicata on the subject of finality of the judgment. The State law and jurisprudence do not warrant the construction placed on the interdiction suit by the United States District Court. Civil Code Arts. 398,400,401; De Lesdernier v. De Lesdernier, 45 A. 1366; In re Jones, 116 La. 776.

Second. Because the Court erred in declining to give effect to the judgment of the Court of Appeals of Louisiana, declaring plaintiff sane at a date subsequent to the judgment of interdiction. The judgment of the Court of Appeal- is a final judgment. It was not before the Supreme Court of Louisiana on appeal or any other process of review, and was not subject to review by the Supreme Court
128 and the Supreme Court could not hold that the Court of Appeal was without jurisdiction in this case to set aside the commitment of the Criminal District Court. The judgment of a Court

of competent jurisdiction, on habeas corpus, unappealed from, and not subject to review in any particular, is res adjudicata of the subject contemplated and can not be ignored or submitted to criticism, altogether obiter and of no effect. That the opinion of the United States District Court, interpreting the opinion of the Supreme Court of Louisiana as "holding that the Court of Appeal was without jurisdiction to set aside the commitment of the Criminal District Court" attempts to withdraw from Plaintiff rights adjudicated finally by a Court of competent jurisdiction in a habeas corpus proceeding, and denies to Plaintiff the guarantees of the Federal Constitution, Art. 1 Sec. 9: "The privilege of the writ of habeas corpus shall not be suspended, unless when in case of rebellion or invasion the public safety may require it."

Third. Because the Court erred in declining to give effect to the judgment of the Probate Court of Shelby County Tennessee, the Court of Plaintiff's domicile, decreeing Plaintiff sane and capable of managing his person and estate. Under Article 4 Sec. 1 of the Constitution of the United States the judgment of the Probate Court of Tennessee is entitled to full faith and credit throughout the Union.

"When duly pleaded and proved such judgments have the effect of being not merely prima facie evidence, but conclusive proof of the rights therein adjudicated; and a refusal to give them the force and effect in this respect which they had in the State in which they were rendered denies to the party a right secured to him by the Constitution and laws of the United States."

Christmas v. Russell, 5 Wall. 290.

129 "The meaning of this (Art. 4 Sec. 1 of Constitution of United States and Act of Congress of May 26, 1790) is, that when a judgment or decree has been given in one State by a Court having jurisdiction of the parties and the subject, it has the same force and effect when pleaded or offered in evidence in the Courts of any other State."

Insurance Co. v. Harris, 97 U. S. 336, citing Mills v. Duryee, 7 Cranch 481; Mayhew v. Thatcher, 6 Wheat. 128; Habich v. Folger 20 Wall. 1; Burnley v. Stephenson, 24 Ohio 474; Dobson v. Perace, 12 N. Y. 156.

"The requirement of the Constitution is not that some, but that full faith and credit shall be given by States to the judicial decrees of *a*other States. That is to say, where a decree rendered in one State is embraced by the full faith and credit clause, that constitutional provision commands that the other States shall give to the decree the force and effect to which it was entitled in the State where rendered."

Harding v. Harding, 198 U. S. 317; Haddock, 201 U. S. 562.

Fourth. Because the Court erred in declining to enforce Art. 4 Sec. 2 of the Constitution of the United States, securing to the citizens of one State the privileges and immunities of the several States.

The plaintiff in the State of Tennessee enjoys all the rights and privileges of every other citizen of Tennessee. In that State he is

under no disabilities whatever. He is therefore entitled in Louisiana "to all privileges and immunities" enjoyed by citizens of Louisiana. Referring to this clause of the Constitution the Supreme Court of the United States in the case of Ward v. Maryland, 12 Wall. 430 said:

"Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause *and* unmistakably secures and protects the right of a citizen of one
130 State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade or business without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the Courts of the State; and to be exempt from any higher taxes that are imposed by the State upon its own citizens."

In the case of Paul v. Virginia, 8 Wall. 180, the Supreme Court of the United States, discussing this subject, said:

"It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other states, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from the disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States and egress from them; it insures to them in other States the same freedom possessed by citizens of those States in the acquisition and *employment* of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this. Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."

Five. Because the Court erred in finding a conflict between an interdiction proceeding pending, in no sense final, and a final judgment of a Court of competent jurisdiction. Even if the Louisiana interdiction proceeding be final, there is no conflict. That
131 proceeding relates to a sta-us found by the Louisiana Court to exist prior to May 1914. The Tennessee judgment does not attempt to annul or impair the effect of the Louisiana proceeding. Reference to the pleadings filed by Plaintiff in the Tennessee Court will disclose that those proceedings were frankly and fully alleged and admitted. The Tennessee judgment is predicated on facts found to exist by a jury and Court of competent jurisdiction at a time subsequent to the period dealt with by the Louisiana proceedings. The Louisiana proceedings have been given full faith and credit. The status thereby pronounced could not be continued any longer that the facts of Plaintiff's condition justified. He was always at liberty to show that the incompetency found by the Louis-

iana Court was no longer sustainable by the facts of his present condition. And this is true, when the Louisiana proceedings are given the fullest effect of a final judgment. But, as argued supra, the Louisiana judgment is not final. The State Court in refusing to appoint a curator or otherwise enforce the judgment of interdiction has so decided. It is the law of the case.

Plaintiff has been adjudged competent to manage his person and estate by a Court of competent jurisdiction. His right to a partition can not be denied nor the guarantees of the Federal Constitution withheld because of the pende-cy of an interdiction proceeding, relating to a period long prior to the judgment of the Probate Court of Tennessee.

"The equity jurisdiction and remedies conferred by the Constitution and Statutes of the United States can not be limited or restrained by State legislation and are uniform throughout the different States of the Union. Hence the Circuit Court for any district, embracing a particular State, will have jurisdiction of an equity proceeding against an administrator notwithstanding that by a peculiar structure of the State probate system such a proceed-
132 ing could not be maintained in any Court of the State."

Payne v. Hook, 7 Wall. 429.

Wherefore Plaintiff prays that the decree herein rendered by the United States District Court for the Eastern District of Louisiana be reversed and that said Court may be directed to enter a decree in accordance with the prayer of Plaintiff's bill.

(Signed) J. C. & THOS. GILMORE,
WM. WINANS WALL,
Attorneys for Fernand Vaughan Gasquet, Plaintiff Appellant.

133 *Bond for Appeal.*

Filed August 16th, 1916.

Know all men by these presents, That we, Fernand Vaughan Gasquet as principal, and J. Devereux O'Reilly, as surety are held and firmly bound unto Charles Payne Fenner, Testamentary Executor of Estate of Mrs. Louise Lapeyre Gasquet and Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt, and Mrs. Evelyn Gasquet Fenner, wife of Chas. Payne Fenner, defendants, in the full and just sum of One Hundred Dollars to be paid to the said defendants their certain attorney, executors, administrators or assigns: to which payment, well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 14th., day of August in the year of our Lord, one thousand nine hundred and sixteen.

Whereas, lately at a Session of the United States District Court, holding sessions in and for the Eastern District of Louisiana, in a suit depending in said Court, between Fernand Vaughan Gasquet, Plaintiff and Charles Payne Fenner, Testamentary Executor of Es-

tate of Mrs. Louise Lapeyre Gasquet and Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt and Mrs. Evelyn Gasquet Fenner, wife of Charles Payne Fenner, Defendants a decree was rendered against the said Fernand Vaughan Gasquet, Plaintiff, and the said Fernand Vaughan Gasquet, Plaintiff, having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Charles Payne Fenner, Test. Executor, and Mrs. Martha Gasquet Westfeldt and Mrs. Evelyn Gasquet Fenner citing and admonishing them to be and appear before the United States Supreme Court, to be holden at Washington, D. C. within 30 days from the date thereof.

Now, the condition of the above obligation is such, That if the said Fernand Vaughan Gasquet, Plaintiff shall prosecute this appeal to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) FERNAND VAUGHAN GASQUET. [SEAL.]
By THOMAS GILMORE, *His Attorney.*
" J. DEVEREUX O'REILLY. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of——
—— ——.
—— ——.
—— ——.

Approved by——
(Signed) RUFUS E. FOSTER, *Judge.*

134 UNITED STATES OF AMERICA,
Eastern District of Louisiana, ss:

Personally Appeared, J. Devereux O'Reilly who being duly sworn deposes and says that he is the surety on the within bond, that he resides in the City of New Orleans, State of Louisiana and is worth the full sum of One Hundred Dollars, over and above all his debts and liabilities and property exempt from execution.

(Signed) J. DEVEREUX O'REILLY.

Subscribed and Sworn before me this 16th., day of August 1916.
(Signed) EDWARD B. ELLIS, [SEAL.]
Notary Public, Parish of Orleans, State of Louisiana.

135 *Præcipe for Transcript.*

Filed Aug. 30, 1916.

United States District Court, Eastern District of Louisiana, New Orleans Division, in Equity.

No. 15244.

FERNAND VAUGHAN GASQUET

vs.

CHARLES PAYNE FENNER, Testamentary Executor of Estate of Mrs. Louise Lapeyre Gasquest, et al.

Mr. Henry J. Carter, Clerk U. S. District Court, New Orleans.

DEAR SIR: In the preparation of the transcript in the above numbered and entitled cause please include only the following pleadings and documents:

Bill in Equity of Plaintiff.
Answer of Defendants.
Chapter CXLI of Acts General Assembly of State of Tennessee.
Section 387 of Shannon's Code of Tennessee.
Chapter No. 149, Acts 45th General Assembly of Tennessee, 1887.
Entire transcript of record of proceedings in Probate Court of Shelby County, Tennessee.
Note of Evidence and Testimony of Chas. Payne Fenner.
Testimony on question of jurisdiction.
136 Entire transcript of proceedings in Court of Appeal Parish of Orleans on Habeas Corpus.
Will and codicil of Mrs. Louise L. Gasquet and proces verbal of probate.
Interrogatories and cross interrogatories and deposition F. V. Gasquet.
Transcript of proceedings in Civil District Court.
Opinion and decree of United States District Court.
Motion for new trial.
Order overruling Motion for New Trial.
Petition for appeal and order.
Assignment of Errors.
Appeal Bond.
Citations of Appeal & Marshal's return.
Petition for subpœna & subpœnas duces tecum, Jan. 25, 1916 and return.
Exception of Thos. Gilmore filed Jan. 26, Order of Court thereon, Minutes entry Jan. 26, 1916.
Minute entry Dec. 6, 1915.
Rental contract.

Yours truly,

(Sig.) J. C. & THOS. GILMORE,
" WM. WINANS WALL,
Solicitors for Fernand Vaughan Gasquet, Plaintiff, Appellant.
(Sig.) DENEGRE, LEOVY & CHAFFE,
Solicitors for Defendants.

137 UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana, New Orleans Division.

Clerk's Office.

I, Henry J. Carter, Clerk of the District Court of the United States for the Eastern District of Louisiana, New Orleans Division, do hereby certify that the foregoing 136 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had and assignment of errors in the case of Fernand Vaughan Gasquet versus Charles Payne Fenner, Testamentary Executor of the Estate of Mrs. Louisa Lapeyre Gasquet, Deceased, Mrs. Martha Gasquet, wife of George G. Westfeldt, Mrs. Evelyn Gasquet, wife of Charles Payne Fenner, and their Husbands, No. 15244 of the Docket of said Court, said transcript being made up in accordance with the Præcipe for Transcript copied at page 135 of this transcript.

Witness my hand, and the seal of said Court, at the City of New Orleans, Louisiana, on this 1st day of September, A. D. 1916.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

H. J. CARTER, *Clerk*,
By W. B. DONOVAN,
Deputy Clerk.

138 THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to Mrs. Evelyn Gasquet Fenner, wife of Chas. Payne Fenner, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition and Order of Appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein Ferdinand Vaughan Gasquet, Complainant is Appellant, and Charles Payne Fenner, Testamentary Executor, et als. are Appellees, No. 15,244 of the Docket of said Court, to show cause, if any there be, why the judgment rendered against the said Ferdinand Vaughan Gasquet as in said Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus E. Foster, Judge of the United States District Court, at New Orleans, La., this 14th day of August, in the year of our Lord one thousand nine hundred and sixteen.

(Signed) RUFUS E. FOSTER, *Judge*.

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

Clerk's office.
A True Copy.
H. J. CARTER, *Clerk.*

New Orleans, La., August 14th, 1916.

139 Received by U. S. Marshal. New Orleans, La., August 15th, 1916. And on August 16th, 1916, I served the original of which this is a certified copy on Mrs. Evelyn Gasquet Fenner by handing same to George Denegre attorney of record at his office in New Orleans, La.

FRANK M. MILLER, *U. S. Marshal,*
By W. L. BROWN, *Deputy.*

[Endorsed:] E. W. P. Return. United States District Court, Eastern District of Louisiana. No. 15244. Fernand Vaughan Gasquet vs. Chas. Payne Fenner, Testamentary Executor, etc., et als. Citation of Appeal. Marshal's Return. No. —. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed Aug. 26, 1916. W. B. Donovan, Dep. Clerk.

140 THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to Mrs. Martha Gasquet Westfeldt, wife of George G. Westfeldt. Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition and Order of Appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein Ferdinand Vaughan Gasquet, Complainant is Appellant, and Charles Payne Fenner, Testamentary Executor, et als. are Appellees, No. 15,244 of the Docket of said Court, to show cause, if any there be, why the judgment rendered against the said Ferdinand Vaughan Gasquet as in said Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus E. Foster, Judge of the United States District Court, at New Orleans, La., this 14th day of August, in the year of our Lord one thousand nine hundred and sixteen.

(Signed.) RUFUS E. FOSTER, *Judge.*

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

Clerk's office.
A True Copy.
H. J. CARTER, *Clerk.*

New Orleans, La., August 14th, 1916.

141 Received by U. S. Marshal, New Orleans, La., August 15th, 1916. And on August 16th, 1916, I served the original of which this is a certified copy on Mrs. Martha Gasquet Westfeldt by handing same to George Denegre attorney of record at his office in New Orleans, La.

FRANK M. MILLER, *U. S. Marshal,*
By W. L. BROWN, *Deputy.*

[Endorsed:] E. W. P. Return. United States District Court, Eastern District of Louisiana. No. 15244. Fernand Vaughan Gasquet vs. Chas. Payne Fenner, Testamentary Executor, etc., et als. Citation of Appeal. Marshal's Return. No. —. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed Aug. 26, 1916. W. B. Donovan, Dep. Clerk.

142 THE UNITED STATES OF AMERICA:

District Court of the United States, Eastern District of Louisiana.

The President of the United States to Charles Payne Fenner, Testamentary Executor of Estate of Mrs. Louise Lapeyre Gasquet, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at the City of Washington, D. C., within 30 days from date hereof, pursuant to a Petition and Order of Appeal filed in the Clerk's Office of the District Court of the United States for the Eastern District of Louisiana, wherein Ferdinand Vaughan Gasquet, Complainant is Appellant, and Charles Payne Fenner, Testamentary Executor, et als. are Appellees, No. 15,244 of the Docket of said Court, to show cause, if any there be, why the judgment rendered against the said Ferdinand Vaughan Gasquet as in said Appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Rufus E. Foster, Judge of the United States District Court, at New Orleans, La., this 14th day of August, in the year of our Lord one thousand nine hundred and sixteen.

(Signed.) RUFUS E. FOSTER, *Judge.*

[Seal U. S. District Court for the Eastern Dist. of La., N. O. Div.]

Clerk's office.
A True Copy.
H. J. CARTER, *Clerk.*

New Orleans, La., August 14th, 1916.

143 Received by U. S. Marshal, New Orleans, La., August 15th, 1916. And on August 16th, 1916, I served the original of which this is a certified copy on Charles Payne Fenner, Testamen-

tary Executor by handing same to George Denegre attorney of record at his office in New Orleans, La.

FRANK M. MILLER, *U. S. Marshal.*
By W. L. BROWN, *Deputy.*

[Endorsed:] E. W. P. Return. United States District Court, Eastern District of Louisiana. No. 15244. Fernand Vaughan Gasquet vs. Chas. Payne Fenner, Testamentary Executor, etc., et als. Citation of Appeal. Marshal's Return. No. —. U. S. District Court, Eastern District of Louisiana, New Orleans Division. Filed Aug. 26, 1916. W. B. Donovan, Dep. Clerk.

Endorsed on cover: File No. 25,486. E. Louisiana D. C. U. S. Term No. 656. Fernand Vaughan Gasquet, appellant, vs. Charles Payne Fenner, Testamentary Executor, et al. Filed September 12, 1916. File No. 25,486.

JAN 9 1918
JAMES D. MAHER
CLERK

Supreme Court of the United States

OCTOBER TERM, 1917.

No. 261.

FERNAND VAUGHAN GASQUET,
Appellant,

versus

CHARLES PAYNE FENNER, Testamentary Executor,
Et Al.

Appeal From Judgment Rendered by the District Court of the United States for the Eastern District of Louisiana, at New Orleans, Louisiana.

BRIEF FOR PLAINTIFF AND APPELLANT.

J. C. GILMORE,
THOS. GILMORE,
WM. WINANS WALL,
Attorneys for Fernand V. Gasquet,
Plaintiff, Appellant.

Hansell Printing Co. "The Legal Printers," 720 Poydras St., N. O.

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Supreme Court of the United States

OCTOBER TERM, 1917.

No. 261.

FERNAND VAUGHAN GASQUET,
Appellant,

versus

CHARLES PAYNE FENNER, Testamentary Executor,
Et Al.

Appeal From Judgment Rendered by the District Court of the United States for the Eastern District of Louisiana, at New Orleans, Louisiana.

BRIEF FOR PLAINTIFF AND APPELLANT.

SYLLABUS.

Whether a person is possessed of sufficient capacity to change his domicile is a question of fact. In general it may be stated that but a comparatively slight de-

gree of understanding is required in order that his action may be recognized.

Text of Cyc., *verbum* Domicile, Vol. 14, p. 848; *Concord vs. Rumney*, 45 N. H. 423, 428; Culver's Appeal, 48 Conn. 165; *Freeport vs. Stephenson County*, 41 Ill. 495; *Ensor vs. Graff*, 43 Md. 291; *Talbot vs. Chamberlain*, 149 Mass. 57; *Holyoke vs. Haskins*, 5 Pick. 20; *Upton vs. Northbridge*, 15 Mass. 237.

When a person who has been interdicted in one State removes his domicile to another State, where, after having recovered from his insanity, he institutes proceedings in the court of his domicile in pursuance of a statute of the State of his new domicile to have the interdiction removed and is successful in so doing; the judgment repealing the interdiction does not deny full faith and credit to the judgment of the court of the first domicile, pronouncing the interdiction.

Fuzier-Herman, Vol. 24, pp. 583, 584, Nos. 786, 787; Laurent, Vol. 5, Art. 332; *Widow Merlin vs. Her Relatives*, Tribunal D'Appel De Paris, 13 germ. an X (S. et P. chr.).

Every State possesses an exclusive sovereignty and jurisdiction within her own territory; and her laws affect all property and persons residing within it. The State may regulate the manner and circumstances under which property is held, and the condition, capacity and state of all persons therein.

Penoyer vs. Neff, 95 U. S. 722; Story, Conflict of Laws, c. 2; Wheat., International Law, pt. 2, c. 2.

Therefore, a State would have the power to provide for the removal of an interdiction pronounced against one of its citizens while domiciliated in another State.

A judgment of a court of competent jurisdiction, fixing the status of a person at his domicile, is entitled to full faith and credit, under the Constitution of the United States, in both the State and United States Courts.

Penoyer vs. Neff, 95 U. S. 734; *Haddock vs. Haddock*, 201 U. S. 567; *Atherton vs. Atherton*, 181 U. S. 155.

The State of Louisiana is fully committed to the rule that allows full effect to the status of domicile, and that the status of a person must be determined according to the law which has next previously rightfully operated on and fixed that status.

Lunsford vs. Coquillon, 2 Martin (N. S.), 401; *Augusta Insurance and Banking Company vs. Morton*, 3 An. 417; *Roberts vs. Wilkinson*, 5 An. 369; *Baehr et al. vs. Terry*, 105 La. 480; *Marks vs. Germania Savings Bank*, 110 La. 659; *Succession of Caballero*, 24 An. 576; *Emma W. Hansell vs. Henry H. Hansell*, 44 An. 548.

A citizen *sui juris* of one State, under Article 4, Section 2, of the Constitution of the United States, is entitled to all the privileges and immunities of citizens of another State of the same class. He would have the right to protection by the Government; enjoyment of

life and liberty, with the right to acquire and possess property of every kind.

Corfield vs. Coryell, 4 Wash. C. C. 371-380; *Blake vs. McLung*, 172 U. S. 248.

While a Federal Court cannot interfere with property in the hands of an administrator, which is in the custody of the State probate court, it may adjudge the rights of the parties in such property, and such adjudication will be binding on the administrator and may be enforced against him personally.

Waterman vs. Canal-Louisiana Bank Co., 215 U. S. 41, and authorities therein cited.

STATEMENT OF THE CASE.

Fernand Vaughan Gasquet, plaintiff and appellant (designated throughout this brief as plaintiff), filed a Bill of Complaint in the District Court of the United States in and for the Eastern District of Louisiana, at New Orleans, Louisiana, in which he averred himself to be a citizen of the State of Tennessee and *sui juris*, against the defendants and appellees, Mrs. Martha Gasquet, wife of George G. Westfeldt; Mrs. Evelyn Gasquet, wife of Charles Payne Fenner, and Charles Payne Fenner, Testamentary Executor, with *seizin*, of the Estate of Mrs. Louise Lapeyre Gasquet, deceased, formerly of the City of New Orleans, the mother of plaintiff and the two first-named defendants, all of the defendants being citizens of the State of Louisiana; in which he de-

manded an accounting from said Charles Payne Fenner, Testamentary Executor of the Estate of the said Mrs. Louise Lapeyre Gasquet, deceased; and of said other two defendants, a partition of said estate. (Record, pp. 1-4.)

Defendants filed an answer to the Bill of Complaint, setting up the following defenses:

I.

"Defendants deny that plaintiff is a citizen of the State of Tennessee and is *sui juris*, and aver that plaintiff is a citizen of the State of Louisiana, whose domicile is in the City of New Orleans, and is not *sui juris*.

"That in a proceeding or suit entitled *'In the Matter of the Interdiction of Fernand Vaughan Gasquet*, No. 106,435 of the docket of the Civil District Court for the Parish of Orleans,' said Civil District Court, being the Court of his domicile having jurisdiction of the subject-matter and over the person of said Gasquet, on the petition of George F. Lapeyre and J. Martial Lapeyre, of the City of New Orleans, in a contradictory proceeding in which said Gasquet was personally cited and served with process and personally appeared and defended, pronounced a judgment of interdiction against said Gasquet, adjudged him incapable of taking care of his person and administering his estate, and appointed an administrator *pro tempore* for the preservation of the movables of said Gasquet and the administration of the immovable estate of the said Gasquet.

"That an appeal was taken by said Gasquet from the said judgment of interdiction to the Supreme Court of Louisiana, which affirmed said judgment on the 22nd day of March, 1915.

II.

"Defendants admit that they are all citizens of the State of Louisiana, domiciled in the City of New Orleans, and inhabitants of the Eastern District of Louisiana.

III.

"Defendants admit that Mrs. Evelyn Gasquet Fenner, Mrs. Martha Gasquet Westfeldt and Fernand Vaughan Gasquet are the sole descendants and heirs at law of Mrs. Louise Lapeyre Gasquet, deceased, who left a last will and testament by which, after making some bequests in the way of special legacies, she left the remainder of her estate to her said children, share and share alike.

"That said Mrs. Gasquet, deceased, appointed defendant Charles Payne Fenner her Testamentary Executor with seizin and without bond; that her will was duly probated and ordered executed by the probate court of her domicile, the Civil District Court of the Parish of Orleans, and that said Fenner has been confirmed and has qualified as such Testamentary Executor and given full possession of her estate in accordance with said last will and testament.

IV.

"Defendants admit that the Estate of Mrs. Louise Lapeyre Gasquet has been appraised in an inventory thereof made by order of said Civil District Court, at more than six hundred thousand dollars ($600,000.00), and that the debts of the deceased have been paid and legacies delivered, but aver that said estate has not been fully administered, as said Fenner has not yet filed, or been ordered to file, his Final Account by the said Civil District Court. To the best of defendants' belief, the residuum of the

property of said deceased remaining in the hands of said Fenner amounts to in the neighborhood of six hundred thousand dollars ($600,000.00), inventoried value.

"Defendants admit that more than one year has elapsed since the confirmation and qualification of said Fenner as Testamentary Executor, but deny that said Fenner owes to plaintiff Gasquet an accounting for his gestion as Testamentary Executor and that said Gasquet is entitled to have his undivided one-third (1/3) interest in the residuum of the Estate of Mrs. Louise Lapeyre Gasquet delivered to him by said Fenner.

"Defendants aver that said Gasquet having been interdicted as aforesaid by the competent court of his domicile in the proceedings hereinbefore set forth and having been declared incapable of taking care of his person and administering his estate, no account is due or can be made to him, and he is not entitled to delivery of his interest in the Estate of Mrs. Gasquet, but said account must be rendered and delivery of his said interest must be made to a curator to be appointed to him under the laws of Louisiana; that defendant Fenner cannot render his final account, or be discharged from his trust as executor and deliver possession of said Gasquet's interest because the appointment of a curator has been delayed by a writ of error sued out by said Gasquet from the Supreme Court of the United States to the Supreme Court of Louisiana and said writ of error, while not affecting the validity or binding force of the hereinabove recited judgment of interdiction—which is, and remains in full force and effect, notwithstanding said writ—nevertheless stays all further proceedings thereunder, including the appointment of a curator to said interdict Gasquet and said Gasquet has specifically opposed the appointment of a curator.

V.

"DEFENDANTS DENY THAT SAID GASQUET HAS THE RIGHT OR CAPACITY TO DEMAND A PARTITION OF THE ESTATE OF MRS. LOUISE LAPEYRE GASQUET AND THE DELIVERY TO HIM OF HIS SHARE IN HER ESTATE. (Capitals ours.)

VI.

"Defendants aver that the effect of said judgment of interdiction under the laws of Louisiana is to liken said Gasquet to a minor, both as respects his person and estate, to annul all acts done by him from the date of filing the petition for interdiction; that is to say, the 14th day of November, 1913, and to take from him the administration of his property and place the administration and control thereof in the hands of an officer of the court pronouncing the judgment of interdiction.

"That said judgment of interdiction is in force and binding and is entitled to full faith and credit in this court under Section 1, Article IV, of the Constitution of the United States, to which defendants refer and which they now plead in defense.

VII.

"Defendants deny that this Court has jurisdiction of this controversy because the plaintiff and all of the defendants are citizens of the State of Louisiana, domiciled in the City of New Orleans, and residents of the City of New Orleans; and, in the alternative, because the property involved in this suit is, and was at the time this suit was instituted, in the possession and control of the Civil District Court of the Parish of Orleans, which alone is seized with jurisdiction and control thereof, and because the said

judgment of interdiction has adjudged the said plaintiff Gasquet non *sui juris*, and without the capacity to stand in judgment, and because, in any event, the property which is the subject of this suit, being situated within the confines and jurisdiction of the State of Louisiana, and the courts of said State having adjudged the plaintiff Gasquet incapable of taking care of his person and property, and having temporarily placed the said property in the care of an administrator *pro tempore* who is an officer of said court, no other court can interfere therewith, and this court sitting in the State of Louisiana cannot order any disposition of said property contrary to the laws of Louisiana, the said State having full right of control and disposition of all property actually situated within it and the right to declare and to establish its own policy and rules for the government, control and disposition of all property situated within its borders." (Record, pp. 4-7.)

Upon the trial of the case, the evidence responsive to the pleadings showed that:

On December 3, 1913, a petition was filed in the Civil District Court of the Parish of Orleans, State of Louisiana, in which it was averred "that, owing to infirmities, the said Fernand Vaughan Gasquet is incapable of taking care of his person or administering his property, and it is therefore advisable and necessary that he be interdicted in accordance with law." (Record, p. 46.)

On November 22, 1913, the plaintiff filed exceptions to that petition, as follows:

"1. That the petition is too vague and uncertain and general and indefinite in its allegations to be safely answered, and that exceptor is entitled to

know specifically the infirmities from which it is alleged he is suffering and which it is alleged render him incapable of taking care of his person or administering his property.

"2. That the petition discloses no right or cause of action." (Record, p. 49.)

On December 23, 1913, a supplemental and amended petition was filed in the suit for interdiction, in which the following averments were made:

I.

"That your petitioners reiterate all of the allegations of their original petition as fully as though incorporated herein.

II.

"That Fernand Vaughan Gasquet is subject to an habitual state of insanity and madness, although he at times, while under the influence of narcotic drugs, appears to have the possession of his reason.

III.

"That heretofore, in the proceedings entitled '*State of Louisiana vs. Fernand V. Gasquet,*' No. 40,089 of the Criminal District Court for the Parish of Orleans, the grand jurors of the State of Louisiana, duly empaneled and sworn in and for the body of the Parish of Orleans, on an indictment of said Fernand V. Gasquet for shooting with intent to murder one Isaac Broad, otherwise known as Isaac Brown, returned not a true bill on the ground of insanity on the 7th day of June, 1912.

IV.

"That thereupon the District Attorney for the Parish of Orleans, on the 11th day of June, 1912, represented to the said Criminal District Court that under the Revised Statutes of 1870, Section 993, it is provided that whenever any person arrested to answer for any crime before any court in this State, shall not be indicted by the Grand Jury by reason of insanity or mental derangement of such person, and the discharge or going at large of such person shall be deemed by the court to be dangerous to the safety of the citizens or peace of the State; that the court was authorized to commit such person to the State Insane Hospital, there to be detained until he be restored to his right mind; that said Fernand V. Gasquet had been declared insane and mentally deranged by the Grand Jury; that his discharge or going at large was dangerous to the safety of the citizens and the peace of the State, and that he should be committed to the criminal ward of the East Louisiana Hospital for the Insane, as is provided in the aforesaid section of the Revised Statutes and according to the terms of Act 264 of 1910, page 454.

V.

"That said Criminal District Court set the said application or rule down for hearing on the 14th day of January, 1912; that said Fernand V. Gasquet was duly notified, and on the 14th day of June, 1912, a hearing was had contradictorily with said Gasquet, who was placed at the bar of said court in the custody of the Criminal Sheriff of the Parish of Orleans, and the hearing not being completed the same was continued to June 28th, 1912, and the court having heard the evidence ordered the rule made absolute, and further ordered that the defendant, Fernand Vaughan Gasquet, be committed to the Louisiana

State Asylum for the Criminal Insane, at Jackson, Louisiana, until such time as he is cured and of sound mind. All of which will more fully appear by duly certified copies of the indictment, action of the Grand Jury thereon, and minutes of the said Criminal District Court.

VI.

"That for lack of proper accommodations in the Louisiana State Asylum for the Criminal Insane, at Jackson, Louisiana, said Fernand V. Gasquet has remained in the custody of the Criminal Sheriff for the Parish of Orleans, and is now held in his custody.

VII.

"That Fernand Vaughan Gasquet is addicted to the abuse of alcohol and addicted to narcotics; that he has a psychopathic constitution; that he has hardening of the arteries due to nephritis affecting his mental condition and suffers from delusions.

"And that said Fernand Vaughan Gasquet is incapable of taking care of his person or administering his property, and it is, therefore, advisable and necessary that he be interdicted in accordance with law." (Record, pp. 52, 53.)

And the prayer of that petition was for plaintiff's interdiction.

On January 7, 1914, an answer was filed by plaintiff to the original, supplemental and amended petitions for interdiction, in which his infirmities and incapacity were denied. (Record, pp. 54-56.)

On the 15th day of June, 1914, judgment of interdiction was rendered as follows:

"This cause having been argued and submitted to the Court on the 2nd instant, and the Court having taken time to consider and being duly advised, and by reason of the law and evidence being in favor of plaintiffs and against defendant, and for reasons fully orally assigned:

"It is ordered, adjudged and declared that there be judgment in favor of plaintiffs and against defendant, Fernand Vaughan Gasquet, decreeing that said Fernand Vaughan Gasquet is incapable of taking care of his person and administering his estate, and pronouncing his interdiction; costs of this proceeding to be paid out of the estate of said defendant." (Record, p. 58.)

On the 19th day of June, 1914, an appeal from said judgment of interdiction was taken by plaintiff to the Supreme Court of Louisiana. (Record, p. 62.)

On the 25th day of January, 1915, the Supreme Court of Louisiana rendered judgment affirming the judgment of interdiction by the Civil District Court of the Parish of Orleans.

An application for a rehearing was filed in the interdiction suit in the Supreme Court of Louiisana on February 8, 1915.

While the application for a rehearing was pending in the interdiction suit in the Supreme Court of Louisiana the plaintiff applied to the Court of Appeal for the Parish of Orleans for a writ of *habeas corpus*, to obtain his release from the custody of the Criminal Sheriff of the Parish of Orleans, State of Louisiana, under commitment to the ward for the criminal insane of the State Insane Asylum, and on July 7, 1914, after a hearing before the Court of Appeal, with a full bench, plaintiff was given his liberty, because

"he has recovered his sanity, and that it would no longer endanger the safety and peace of the community that he be restored to liberty." (Record, p. 36.)

Plaintiff was, thereupon, released from custody and immediately left the State of Louisiana and went to Gulfport, Miss., where he remained until July 28th, when he left that place for Memphis, Tenn. (See testimony of plaintiff, Record pp. 27-29.) Plaintiff went to Tennessee, with the intention of making the city of Memphis his permanent home and becoming a citizen of Tennessee, and had, at the time he left the State of Louisiana, and subsequently, the intention of never returning to the State of Louisiana. Upon plaintiff's arrival in Memphis, Tenn., he immediately entered the sanitarium of Dr. George E. Pettey and took an extended treatment for the elimination of the morphine habit, which treatment was entirely successful.

On February 19, 1915, plaintiff presented a petition to the Probate Court of Shelby County, Tennessee, to have his mental condition inquired into, in accordance with Chapter 149 of the Acts of the General Assembly of the State of Tennessee for the year 1887, being an act conferring jurisdiction on the County Court to declare persons who have been declared lunatics or of unsound mind of sound mind, and to restore to them the control of their property. (Record, pp. 15-19.) Chapter 149 of the Acts of the General Assembly of the State of Tennessee for the year 1887 is as follows:

"CHAPTER NO. 149.

"An Act conferring jurisdiction on the County Courts to declare persons who have been declared lunatics or of unsound mind of sound mind, and to restore to them the control of their property.

"MAY MAKE APPLICATION TO COUNTY COURT.

"SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That when any person shall be declared a lunatic, or person of unsound mind, as now provided by law, and afterwards shall become restored in mind, such person, upon the written certificate of two respectable physicians that he or she is a person of sound mind, may make application by petition to the County Court, and the court shall order the Sheriff forthwith to summon a jury of twelve freeholders, or householders, to ascertain, by inquisition, the condition of such person's mind and make return thereof to the court at that or the succeeding term.

FORM OF WRIT.

"SEC. 2. *Be it further enacted,* The writ issued to the Sheriff may be in the following form:

" 'STATE OF TENNESSEE,

" '..... COUNTY:

" '*To the Sheriff of ..... County, Greeting:*

" 'You are hereby commanded to inquire, by the oath of twelve freeholders, or householders, summoned by yourself, whether ....., of ....., in the county of ....., is a lunatic or person of unsound mind, so that he has not capacity sufficient for the government of himself and his property. And you are further commanded that at certain days and places appointed by yourself, you diligently make application in the premises and the same distinctly and plainly made return to the County Court of said county at its next session, together with the writ.

"'Witness ....., Clerk of said court, at office, ... the..... day of ....., 18....'

MAY BE RETURNABLE TO SAME TERM.

"SEC. 3. *Be it further enacted*, The writ may be returnable to the same term of court from which it issues, if the court so direct; and in such case the same proceedings shall be had as if the return were made the next succeeding term.

SUBPOENA FOR WITNESSES.

"SEC. 4. *Be it further enacted*, The Clerk of the County Court or any Justice of the Peace, upon application, may issue subpœna for witnesses to attend the inquisition, and such witnesses are subject to the penalties and entitled to the privileges and compensations of regular witnesses.

COSTS.

"SEC. 5. *Be it further enacted*, That the cost shall be paid by the party making the application, and if he shall be declared a lunatic, it shall be paid out of his estate.

RETURN.

"SEC. 6. *Be it further enacted*, That upon the return of jury, which shall be in writing and entered upon the minutes of the County Court, that said person is of sound mind and competent to control himself and his property, the court shall pronounce a decree declaring such person of sound mind; and the guardianship of such person, if any exist, shall terminate, and he may demand settlement of his guardian

WHERE THE JURY CANNOT AGREE.

"SEC. 7. *Be it further enacted*, That if the jury do not agree the court may issue an alias and pluries writ to the Sheriff, who shall summon twelve other freeholders, or householders, to try the cause."

WHERE APPLICANT IS DECLARED A LUNATIC.

"SEC. 8. *Be it further enacted*, That if the applicant shall be declared a lunatic, or person of unsound mind, so that he cannot control himself and business, no second application shall be made to the court until after one year.

"SEC. 9. *Be it further enacted*, That the application provided for herein may be made in any county where the applicant may reside, or where his property or guardianship may be.

"Passed March 19th, 1887.

"W. L. CLAPP,
"*Speaker of the House of Representatives;*

"Z. W. EWING,
"*Speaker of the Senate.*

"Approved March 24th, 1887.

"ROBT. L. TAYLOR,
"*Governor.*"

(Record, pp. 13-14.)

The Probate Court of Shelby County is the County Court of Tennessee.

"387 (316h) 354. PROBATE COURT OF SHELBY COUNTY; JURISDICTION OF PROBATE COURT OF SHELBY COUNTY. A court of record is established in Shelby

County, to be called the 'Probate Court of Shelby County,' consisting of one judge, elected by the qualified voters of the county, and having the same qualifications and terms of office as the Circuit Judges of the State. Said court shall have original jurisdiction of all matters of probate, the administration of estates and orphans business, embracing all the subjects and powers enumerated in, and conferred by, Sections 4201, 4203, 4204, 4205 and 4208 of the Code of 1858, and concurrent jurisdiction with the Chancery Courts of Shelby County over the persons and estates of idiots, lunatics and other persons of unsound mind, and of proceedings for the partition or sale of estates by personal representatives, guardians, heirs, tenants in common, joint owners or copartners; for the sale of lands at the instance of creditors of decedents, where the personality is insufficient to satisfy the debts of the estate, and for the allotment of dower; and it is hereby vested with all the powers of a Chancery Court touching these matters; shall have and exercise all the jurisdiction of the County Court which may be exercised at its quorum terms, except that pertaining to public roads and the apportionment of overseers thereof, and that pertaining to ferries, water courses, and local improvements and public buildings, and except also the jurisdiction, powers and duties conferred upon the chairman of the County Court as chairman and as financial agent of the county. Said court shall have and exercise all the powers and jurisdiction over the persons and matters committed to its jurisdiction which are now conferred by law on the county courts or county judges in other counties. The judge is also vested with all the powers conferred by law upon judges of the inferior courts in this State. From said court appeal shall lie directly to the Supreme Court. (1870, Ch. 86; 1881, Ch. 141, Sections 1, 2.)" (Record, p. 12.)

After full disclosure of all of the proceedings of the Criminal District Court of the Parish of Orleans, the Civil District Court of the Parish of Orleans, the Court of Appeal of the Parish of Orleans and the Supreme Court of Louisiana, the jury of twelve freeholders, or householders, rendered a verdict, and the Probate Court of Shelby County, Tennessee, on the 23rd day of February, 1915, pronounced judgment, as follows:

"STATE OF TENNESSEE,

"COUNTY OF SHELBY, SS:

"Please before the Honorable J. S. Galloway, Judge of the Probate Court of Shelby County, held in the City of Memphis and State and County aforesaid, and at the February term thereof, 1915.

"*Be it remembered,* That on, to wit, 23rd day of February, 1915, it being one of the days of said February, 1915, term, the following appears of record in the words and figures, viz.:

" '*In re* of No. 17,859, R. 21.

" '*Fernand V. Gasquet, ex parte.*

" 'This cause was this day heard upon the whole record, including especially the petition of Fernand Vaughan Gasquet filed herein February 20, 1915, making application for a jury of twelve freeholders to ascertain by inquisition the condition of mind of the said Fernand Vaughan Gasquet, and praying that the court make all proper orders and grant all proper relief in the premises as warranted by law and the findings of said jury, the *fiat* of the Honorable J. S. Galloway, Judge, directing the issuance to the Sheriff of writ of inquisition as prayed in said petition and in accordance with law, the said writ of inquisition is-

sued to the Sheriff directing that he summon said jury, together with the return of the Sheriff upon said writ, the testimony of witnesses introduced and examined before said jury, and the verdict duly signed by said jurors, all householders or freeholders of Shelby County, Tennessee, which verdict is in words and figures as follows, to wit:

" 'The undersigned jurors, having been duly summoned and sworn to inquire and ascertain whether the within named Fernand Vaughan Gasquet is a lunatic or person of unsound mind so that he has not capacity sufficient for the government of himself and his property, upon oath do say that he is of sound mind and has sufficient capacity for the government of himself and his property.

" 'As witness our hand this the 20th day of February, 1915.

" 'C. H. COLE, *Foreman;*
" 'A. H. COHEN,
" 'C. M. BERRY,
" 'A. T. WALKER,
" 'FRANK NOVITZKI,
" 'J. W. MCNALLY,
" 'O. N. KLENKE,
" 'G. W. BARNETT,
" 'JOHN J. DOLAN,
" 'B. F. YOUNG,
" 'S. E. YATES,
" 'JAMES DEGNON.

" 'And it appearing to the Court that the petitioner, Fernand Vaughan Gasquet, is, and has been since about July 28th, 1914, a resident and citizen of the County of Shelby and State of Tennessee, having removed his domicile to said county and State on about said date from the Parish of Orleans and State

of Louisiana, where he formerly resided, and that, while a resident of said Parish of Orleans and State of Louisiana, by proceedings brought in the Civil District Court at New Orleans, Louisiana, he was adjudged incapable of taking care of his person and administering his estate, and was, therefore, interdicted, and that previous thereto he was adjudged mentally unsound by the Criminal District Court of the State of Louisiana, in the City of New Orleans, but that said petitioner for some time before July 24, 1914, was and has ever since continued to be of sound mind and of sufficient capacity for the government of himself and his property, and that the verdict of the jury as hereinbefore set forth is in proper form and warranted by the evidence it is also ordered, adjudged and decreed by the Court.

" 'It is therefore ordered, adjudged and decreed that said verdict of the jury be and the same is hereby confirmed, and that it is further adjudged, decreed and declared by the Court that said Fernand Vaughan Gasquet is a person of sound mind and capable and competent to control himself and his property, and that he is entitled to settlement from any and all persons having control, charge or management of any part of his estate, real or personal, any disability of the said Gasquet by reason of the proceedings against him hereinbefore mentioned being hereby removed.' ". (Record, pp. 20-22.)

On the 22nd day of March, 1915, a rehearing was refused by the Supreme Court in the suit for the interdiction of plaintiff, Chief Justice Monroe dissenting.

On the 30th day of March, 1915, plaintiff obtained a writ of error from the Supreme Court of the United States to the Supreme Court of Louisiana.

On April 1, 1915, the plaintiffs in the suit for the interdiction of plaintiff filed in the Civil District Court for the Parish of Orleans a petition for a family meeting to name a curator to plaintiff.

On April 5, 1915, before any action was taken on the order for a family meeting to appoint a curator, plaintiff filed a motion in the interdiction suit in the Civil District Court of the Parish of Orleans to have the order calling a family meeting to name a curator to him rescinded. (Record, p. 60.)

On April 9, 1915, the Judge of the Civil District Court rendered judgment rescinding the order for a family meeting to name a curator to plaintiff (Record, p. 61), and, up to the time of the filing of this appeal in this court, no curator or guardian or committee had been appointed to plaintiff by any court, except that an administrator *pro tempore* was appointed to plaintiff by the Civil District Court for the Parish of Orleans, on his own application, who was vested only with the power to preserve his personal property and administer his immovable property. The administrator *pro tempore* appointed to a person whose interdiction is being sought in Louisiana has absolutely no control of or authority over his person. The administrator *pro tempore* appointed in the interdiction proceedings in the Civil District Court of the Parish of Orleans, State of Louisiana, never had in his possession any of plaintiff's property.

In the interim between the proceedings in the Probate Court of Shelby County, Tennessee, by which plaintiff's mental condition was investigated and he was adjudged by the Probate Court of Shelby County, Tennessee, in pursuance of the law of Tennessee, to be of sound mind and the filing of the Bill of Complaint in the United States District Court for the Eastern District of Louisiana, plaintiff mar-

ried (Record, p. 30) and became an elector of the State of Tennessee, and has manifested by his testimony and by every possible means the fact of actual removal coupled with the *animus manendi*. (Record, p. 28.)

Judgment was rendered by the United States District Court for the Eastern District of Louisiana as follows:

> "It is ordered, adjudged and decreed by the Court that the bill of complaint of Fernand Vaughan Gasquet be and the same is hereby dismissed at complainant's costs, without prejudice to plaintiff's rights to apply to the Civil District Court for the Parish of Orleans to set aside the judgment of interdiction, and thereafter to renew his application in this court." (Record, p. 70.)

SPECIFICATION OF ERRORS.

It is submitted that in deciding the case the Judge of the United States District Court erred, as follows:

1. In not deciding that under the testimony produced on the trial the plaintiff had the capacity and the right to change, and did change, his domicile from the City of New Orleans, in the State of Louisiana, to the City of Memphis, in the State of Tennessee.

2. In holding that there is a conflict between the proceedings, the verdict of the jury of freeholders, and the judgment of the Probate Court of Shelby County, Tennessee, finding and adjudging plaintiff to be of sound mind, and, therefore, *sui juris*, on February 20, 1915, and the judgment of the Civil District Court of the Parish of Orleans, State of Louisiana, finding and adjudging him incapable of taking care of his person and administering his estate and pro-

nouncing his interdiction on the 15th day of June, 1914, and, therefore, the finding of the former court denied to the latter full faith and credit under Article 4, Section 1, of the Constitution of the United States.

3. In holding that the interdiction of plaintiff, pronounced by the Civil District Court of the Parish of Orleans, State of Louisiana, could only be repealed in a proceeding in that court, and, therefore, the proceedings, finding and judgment of the Probate Court of Shelby County, Tennessee, the court of plaintiff's domicile, could not have the effect of restoring to him the status of a person *sui juris*.

4. In not deciding that the proceedings, finding and judgment of the Probate Court of Shelby County, Tennessee, the court of plaintiff's domicile, pronouncing him of sound mind and fixing his status as that of a person *sui juris* in Tennessee, were entitled to full faith and credit in Louisiana.

5. In denying to plaintiff, a citizen *sui juris* of Tenessee, all of the privileges and immunities of a citizen of Louisiana in Louisiana, guaranteed to him by Article 4, Section 2, of the Constitution of the United States.

6. In not according full recognition to the change of status of plaintiff by reason of the removal of his domicile to Tennessee, and the proceedings, finding and judgment of the Probate Court of Shelby County, Tennessee, changing his status or condition to that of a person *sui juris*, under the private international law, as accepted by both the States of Louisiana and Tennessee.

7. In finding that plaintiff was interdicted in Louisiana because of the excessive use of drugs and alcohol; that, under this aspect of the case, plaintiff might be considered

sane, and yet, under the laws of Louisiana, subject to interdiction.

8. In not deciding that the United States District Court for the Eastern District of Louisiana has jurisdiction in this case, where the jurisdiction is based on a diversity of citizenship, to decide that plaintiff has the right to an accounting for and a partition of his property in Louisiana, when that right is denied by the defendants, the manner in which the right shall be exercised being an entirely different matter.

FIRST SPECIFICATION OF ERROR.

We shall discuss, *first*, the mental capacity of the plaintiff to intelligently select a new domicile;

Second, the plaintiff's right to change his domicile from Louisiana to Tennessee; and,

Third, whether he did in fact change his domicile and citizenship from Louisiana to Tennessee prior to the bringing of this suit in the United States District Court.

I.

In considering this phase of the case, it will be necessary for the Court to review the evidence bearing directly on plaintiff's mental condition between the date of the pronouncement of the judgment of interdiction by the Civil District Court and the filing of the Bill of Complaint. In order to properly appreciate the evidence to be found in the record it will be necessary to know something of the courts in which the proceedings bearing on the mental condition of

plaintiff have been conducted; so we will reproduce the articles of the Constitution of Louisiana creating those courts:

CRIMINAL DISTRICT COURT, PARISH OF ORLEANS.

"Article 139. The Criminal District Court shall have exclusive original jurisdiction for the trial and punishment of all offenses when the penalty of death, imprisonment at hard labor or imprisonment without hard labor for any time exceeding six months, or a fine exceeding three hundred dollars may be imposed, and appellate jurisdiction in all cases tried before the City Criminal Courts, or Recorders' Courts of New Orleans, which cases shall be appealable on the law and the facts, and shall be tried on the record and the evidence as made and offered in the lower court. Said court shall have general criminal jurisdiction extending to all cases arising in the Parish of Orleans, the jurisdiction of which is not vested by law or by this Constitution in some other court." * * *

CIVIL DISTRICT COURT, PARISH OF ORLEANS.

"Article 133. The Civil District Court shall have exclusiveand general original probate jurisdiction and exclusive original civil jurisdiction in all cases where the amount in dispute or the fund to be distributed shall exceed one hundred dollars, exclusive of interest; and exclusive jurisdiction in suits by married women for separation of property, in suits for separation from bed and board, for divorce, for nullity of marriage, or for interdiction, and in suits involving title to immovable property, or to office or other public position, or civil or political rights; and in all other cases, except as hereinafter provided, where no specific amount is in contest, and of all proceedings

for the appointment of receivers or liquidators to corporations or partnerships. And said court shall have authority to issue all such writs, process and orders as may be necessary or proper for the purpose of the jurisdiction herein conferred upon it."

COURT OF APPEAL, PARISH OF ORLEANS.

"Article 98. The Courts of Appeal, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which jurisdiction shall extend to all cases, civil and probate, of which the Civil District Court for the Parish of Orleans or the District Courts throughout the State have exclusive original jurisdiction and of which the Supreme Court is not given jurisdiction, when the matter in dispute or the fund to be distributed shall not exceed two thousand dollars, exclusive of interest, and all appeals shall be both upon the law and the facts.

"Article 104. The Courts of Appeal, and each of the judges thereof, shall have power to issue the writ of *habeas corpus* at the instance of any person in actual custody within their respective circuits."

SUPREME COURT OF LOUISIANA.

"Article 85. The Supreme Court, except as hereinafter provided, shall have appellate jurisdiction only, which jurisdiction shall extend to all cases where the matter in dispute, or the fund to be distributed, whatever may be the amount therein claimed, shall exceed two thousand dollars, exclusive of interest; to suits for divorce and separation from bed and board, and to all matters arising therein; to suits involving alimony, for the nullity of marriages,

or for interdiction; to all matters of adoption, emancipation, legitimacy, and custody of children; to suits involving homestead exemptions, and to all cases in which the constitutionality or legality of any tax, toll or impost whatever, or of any fine, forfeiture, or penalty imposed by a municipal corporation, shall be in contestation, whatever may be the amount thereof, and to all cases wherein an ordinance of a municipal corporation or a law of this State has been declared unconstitutional, and in such cases the appeal on the law and the facts shall be directly from the court in which the case originated to the Supreme Court; and to criminal cases on questions of law alone, whenever the punishment of death or imprisonment at hard labor may be inflicted, or a fine exceeding three hundred dollars, or imprisonment exceeding six months, is actually imposed. Said court shall have such original jurisdiction as may be necessary to enable it to determine questions of fact affecting its own jurisdiction in any case pending before it, or it may remand the case; and shall have exclusive original jurisdiction in all matters touching professional misconduct of members of the bar, with power to disbar under such rules as may be adopted by the court."

All of these courts dealt with the plaintiff in the chronological order in which they are mentioned.

In 1912 the plaintiff was charged before the Grand Jury of the Parish of Orleans with shooting, with intent to murder, one Isaac Broad. On an *ex parte* investigation of the affair by the Grand Jury of the Parish of Orleans "not a true bill" was found by that body, on the ground of insanity. Thereafter, proceedings were taken in the Criminal

District Court of the Parish of Orleans to have the plaintiff committed to the criminal ward of the State Asylum for the Insane at Jackson, La.; and after hearing, on June 28, 1912, plaintiff was committed to the criminal ward of the Insane Asylum "until such time as he be cured and of sound mind." As there was not then sufficient room to accommodate him at the Asylum for the Insane, he remained in the actual custody of the Criminal Sheriff of the Parish of Orleans until released from such custody by the Court of Appeal of the Parish of Orleans, on July 7, 1914, at which time the suit for his interdiction was pending in the Supreme Court, on an application for a rehearing—judgment of interdiction having been pronounced, by the Civil District Court, on the 15th day of June, 1914, a little more than one year before plaintiff's release from the custody of the Criminal Sheriff under the commitment by the Criminal District Court.

The proceedings taken in the Court of Appeal of the Parish of Orleans had for their object the release of the plaintiff from custody, because, at that time, he was cured of the mental malady previously adjudged to exist by the Criminal District Court of the Parish of Orleans, and was of sound mind. Therefore, the finding of the Court of Appeal, which is a most respectable tribunal, presided over by three judges learned in the law, is certainly competent evidence to prove in this case that the commitment to the insane asylum had terminated, because that court found, after hearing, that the condition requisite (his being cured and of sound mind) had come into existence.

We can conceive of no higher evidence of the actual mental condition of a person than the judgment of a court of competent jurisdiction, pronounced after a full investigation.

On July 7, 1914, just before the departure of the plaintiff from Louisiana, with the intention of never returning, the Court of Appeal of the Parish of Orleans, in adjudging him to be cured and of sound mind, said:

> "He now applies to this Court for his release by *habeas corpus* on the ground that those conditions no longer exist; that he has recovered his sanity and that it would no longer endanger the safety and peace of the community that he be restored to his liberty.
>
> "The only evidence adduced fully establishes his contention; there is no evidence whatever to the contrary.
>
> "Under Article 104, Constitution 1913, this court has the power to issue the writ of *habeas corpus* in such cases, that is 'at the instance of any person in actual custody' within this circuit.
>
> "Article 822, Paragraph 2, and Article 824, Code of Practice, authorize the release of the relator under the circumstances; that is to say, when the change in conditions render the confinement no longer necessary or legal." (Record, p. 36.)

Besides the proceedings of the Court of Appeal of the Parish of Orleans, which were offered in evidence on the trial of this cause, we have the affidavit, on June 29, 1914—more than a year after the judgment of interdiction—of J. A. O'Hara, M. D., Coroner of the Parish of Orleans (who, under the law, has supervision over the mentally and physically afflicted in the Parish of Orleans), to the effect that, at that date, the plaintiff was sane, responsible and harmless, and his release from custody would not be a menace or dangerous to public safety. (Record, p. 39.)

The courts universally recognize that insanity is a curable disease; and where a person committed to an asylum for insanity, upon investigation by a court of competent jurisdiction, has been pronounced sane and responsible and released from custody for that reason, such judgment will certainly be held to be competent evidence of his mental condition at the time it was rendered. It is impossible for the writers to conceive of any better or more competent evidence. Of course, we are not discussing the effect of the judgment of the Court of Appeal of the Parish of Orleans on the judgment of interdiction; we are discussing the right of the plaintiff, based on his intelligence, to acquire a domicile in the State of Tennessee, where the laws of Louisiana are given effect, if at all, solely through the operation of private international law or comity, and are referring to the judgment of a competent court as evidence of his capacity to do so.

Immediately after being pronounced cured and of sound mind and released from custody by the Court of Appeal of the Parish of Orleans, plaintiff left the State of Louisiana, with the intention of never returning; on the 28th of July he went to the City of Memphis, Tennessee, with the intention of making that place his permanent home. Immediately on his arrival, he placed himself in a sanitarium and took treatment for the elimination of the morphine habit, with which he was afflicted (see testimony of Thomas Gilmore, Record, p. 34, and testimony of plaintiff, Record, pp. 27-29), which conduct in itself would constitute evidence of sanity and right thinking.

The next evidence bearing on plaintiff's mental condition is found in the proceedings filed in the Probate Court of Shelby County, Tennessee, which exercises all of the jurisdiction possessed by County Courts throughout the State

of Tennessee in Shelby County, under an act, the title of which reads:

> "An act conferring jurisdiction on the county courts to declare persons who have been declared lunatics or of unsound mind of sound mind, and to restore to them the control of their property." (Record, p. 13.)

The petition presented to the Probate Court of Shelby County, Tennessee, makes full disclosure of all of the proceedings had in the various Louisiana courts with respect to the plaintiff's mental condition; the judgment of interdiction is copied in full in that petition; and to the petition, as required by the act, under which the proceeding was brought, are annexed the certificates of two reputable physicians, practicing their profession in the City of Memphis, both of whom certify that plaintiff is a person of sound mind. (Record, pp. 17-18.) A jury of twelve freeholders or householders was empaneled and sworn to investigate plaintiff's mental condition, in accordance with the act. After full investigation of plaintiff's mental condition, he was, on February 20, 1915, by these twelve men, freeholders or householders, through the instrumentality of a solemn verdict rendered under oath in a court of justice, pronounced to be of sound mind and of sufficient capacity for the government of himself and his property, and the judge of the court conducting the investigation handed down judgment in the case, confirming the verdict of the jury and pronouncing the plaintiff a resident and citizen of the County of Shelby and the State of Tennessee, adjudging him to be a person of sound mind and competent to control himself and his property, and relieving him of the status of an interdict. (Record, pp.

15-22.) All of this occurred more than a month prior to the filing of the Bill of Complaint in this suit; it is respectfully submitted, there could be no better evidence of the mental condition of the plaintiff, on February 23, 1915. Certainly, it could not be denied that, at that time, his mental condition was sound, or that he had sufficient intelligence to select his place of domicile. The consensus of opinion seems to be as stated in the text of Cyc., *Verbum Domicile*, Vol. 14, p. 848:

> "The mere fact that a person is of unsound mind does not necessarily preclude him from establishing his domicile, as the question must depend entirely upon the extent to which his reason has been impaired. In general it may be stated that but a comparatively slight degree of understanding is required in order that his action may be recognized.
>
> "*The selection of a home* draws after it no very important consequences, and may be changed by the party at pleasure, and under the influence of very slight reasons. For an act of so slight importance, a high grade of intellectual power could hardly be required. The mind of a party might be much impaired, or it might be very generally under the influence of insane delusions, and yet if those insane influences had no bearing upon the selection of a home, the legal capacity to choose a place of residence might not be affected. 'If it were admitted * * * that idiots and persons wholly bereft of understanding are incapable of changing their domicile, it would not follow that the same incapacity would attach to all degrees of mental imbecility. There are those, and not a few, who may be unable to manage their property and other concerns with good judgment and discretion, and may need guardians to protect them

> from imposition, and who nevertheless have sufficient understanding to choose their homes.' This question is, therefore, a matter of fact to be settled by a jury." (*Concord vs. Rumney*, 45 N. H. 423, 428.)
>
> Culver's Appeal, 48 Conn. 165; *Freeport vs. Stephenson County*, 41 Ill. 495; *Robert's Succession*, 2 Rob. 427; *Ensor vs. Graff*, 43 Md. 291; *Talbot vs. Chamberlain*, 149 Mass. 57, 20 N. E. 305, 3 L. R. A. 254; *Holyoke vs. Haskins*, 5 Pick. 20, 16 Am. Dec. 372; *Upton vs. Northbridge*, 15 Mass. 237.

Therefore, it would seem to be free from doubt that the record shows plaintiff to have been possessed of ample intelligence to choose a domicile.

II.

It is argued very earnestly by opposing counsel that, by reason of the pendency of the interdiction proceeding in the courts of Louisiana the plaintiff was without the right or power to change his domicile and citizenship from Louisiana to Tennessee, and great stress is laid on Article 423 of the Revised Civil Code of Louisiana

> "Article 423 (410). REMOVAL OF INTERDICT FROM STATE. The person interdicted cannot be taken out of the State without a judicial order, given on the recommendation of a family meeting, and on the opinion delivered under oath of at least two physicians that they believe the departure necessary to the health of the person interdicted.

And counsel in the lower court attempted to draw a parallel between a person who removes from the State while a

suit for interdiction is pending against him and a fugitive from justice.

We cannot see what relevancy the article of the Code has to this case, where the plaintiff has, voluntarily, removed himself permanently from Louisiana. There was no one who could prevent his free movement to whatever place he might please. He was under no restraint; he had no curator or guardian or any one else over him with authority to restrain his movements or direct his conduct; he was a free agent, except that any person contracting with him in Louisiana, at that time, ran the risk of the judgment of interdiction being affirmed by the appellate court and the contract thereby becoming subject to annulment, because made with an incapacitated person.

Our opponents in the case seem to lose sight of the fact that the laws of Louisiana stop at the State boundary lines; that they have no force *ex proprio vigore* beyond the borders of Louisiana, and that, when plaintiff entered the State of Tennessee he did so in perfect freedom, from the effect of all Louisiana laws, except such as might be given them by the State of Tennessee. Being on Tennessee soil and possessed of sufficient intelligence and reason, why could not plaintiff acquire a residence and domicile in Tennessee, unless there was something in the law of that State that would prevent him from so doing?

There is nothing in the law of Tennessee that would prohibit him from doing so. Under our view of the case, the record shows that the plaintiff was sane when he entered the State of Tennessee; but we are unable to appreciate that there would be any difference if a violent maniac had inadvertently strayed within the borders of Tennessee and, before being apprehended, had recovered his perfect sanity. After becoming possessed of such understanding, there

would be no reason why even the former maniac could not acquire a home and domicile in Tennessee. All of the adjudged cases are in accord with our view.

A case identical with this was decided by the able Supreme Court of Massachusetts—*Talbot vs. Chamberlain*, 149 Mass. 57.

In that case a person domiciled in Iowa had a suit for interdiction filed against him; after the case had been heard, but before a guardian had been appointed, he left the State of Iowa, took up his residence in the State of Massachusetts, where he died; after his permanent removal from Iowa, a guardian was appointed to him; in Massachusetts he made a will, disposing of his estate, which was attacked for incapacity, on the ground that he was without capacity to change his domicile, and that the will was not in accordance with the law of Iowa. The court said:

> "So far as it affects the succession of property, the act of the ward in changing his domicile is no more inconsistent with or prohibited by the guardianship than is his act of making a will. Both acts require competent mental capacity, and the decree of guardianship is not conclusive of the want of capacity to do either act. That decree does not fix the general status of the ward as a lunatic or an insane person, but only his local status as one under guardianship in this Commonwealth as an insane person, and is conclusive only in the domestic courts and as to acts which the law required to be done by the guardian and forbids to be done by the ward."
>
> "When Mr. Stone left this State and went to Iowa to establish his residence there he had sufficient mental capacity to change his domicile, and he was not under guardianship. The petition for the

appointment of a guardian over him was pending, and he had attended a hearing upon it, but there was no adjudication that he was a proper subject for guardianship and no appointment of guardian until several weeks after he took up his residence in Iowa. He was under no custody or restraint and there was no one who had a right to assent or object to his removal."

Talbot vs. Chamberlain, 149 Mass. 57.

To the same effect are *Breed vs. Pratt*, 18 Pick. 115; *Mowry vs. Latham*, 23 Atl. (R. I.) 13; *Holyoke vs. Haskins*, 16 Am. Dec. 375.

"A person actually insane may acquire a domicile in the place of his actual residence, if he has sufficient capacity to choose a residence."

Concord vs. Rummey, 45 N. H. 423; 17 Cent. Digest, *Verbum "Domicile,"* Sec. 1.

Again, we have a very similar case decided by the Supreme Court of the State of New York—*In re Fidelity Trust Company of Newark*, 57 N. Y. Supp. 361. The court said:

"The Fidelity Trust Company of Newark was appointed committee of the person and estate of the incompetent Mary B. McDermot, by decree of the Orphans' Court of Essex County, N. J., a court having jurisdiction to make such appointments in general. The incompetent's next of kin, Mrs. Jennie E. Mead, consented to the entry of the decree, but now seeks her own appointment as committee and opposes the Trust Company's motion for ancillary appointment in this State upon the ground that the incompetency of said Mary B. McDermot had been declared in the course of proceedings in this court prior

to the date of such incompetent's removal to New Jersey, and that, being then incompetent, she could acquire no residence in that State; hence, that the foreign court had no jurisdiction. It is true that Mary B. McDermot was declared an incompetent person on the return of an inquisition in lunacy upon a commission issued by this Court, but no appointment of a committee was made in those proceedings and the effect of the inquisition was not to preclude absolutely any exercise of an intention of change of residence of the incompetent, since the ability to choose a domicile still remains a question of fact, nothwithstanding the inquisition."

* * * * * * *

"As to the fact of Mary B. McDermot's ability to choose a domicile in New Jersey, upon which the jurisdiction of the foreign court might be said to depend, that court has determined the fact, and the next of kin, Mrs. Mead, is concluded from disputing it.

21 Howard 103; 75 Ala. 438; 58 Mass. (4 Cush.) 190; 86 Mass. (4 Allen) 177; 126 Mass. 161; 128 Mass. 219; 58 N. H. 283; 61 N. Y. 261; 27 N. W. 320; Century Digest, Vol. 17, Sec. 40, p. 1100.

In the case of *Breed vs. Pratt*, Chief Justice Shaw said:

"The Court are of opinion that the fact that the testator was under guardianship at the time of the execution of the will * * * did not *de facto* disqualify him from making a valid will, nor does it operate as conclusive evidence of insanity. This point is now to be considered as settled by authority."

Breed vs. Pratt, 18 Pick (Mass.) 117.

The law does not inquire into the purposes or motives which induced a party to change his domicile.

> "A change of domicile may be made through caprice, whim or fancy, for business, pleasure, to secure a change of climate or a change of laws, or for any reason whatever, provided there is an absolute and fixed intention to abandon one and acquire another, and the acts of the person affected confirm the intention."
>
> *In re Newcomb's Estate*, 84 N. E. 954, citing *McConnell vs. Kelly*, 138 Mass. 372; 3 Wash. (U. S.) 553; 2 Sumner 254; 129 U. S. 328; 126 U. S. 192.

A case on all fours with this was decided by the Supreme Court of Connecticut—*Larkin N. Gates vs. Andrew A. Bingham*, 39 Conn. 275.

In that case, a conservator was appointed to Bingham by the Probate Court of his domicile in Connecticut, the Court finding that by reason of improvidence and prodigality he had become incapable of managing his affairs; afterwards, he removed to Massachusetts, where he acquired a domicile; he then came back to his former home in Connecticut, where he remained a short time; afterwards, he returned to Massachusetts, and became indebted to the plaintiff; plaintiff brought suit against the defendant in Connecticut. On the trial:

> "The defendant requested the Court to rule that his disability by reason of the appointment of a conservator followed and was attached to his person; and that to render him liable in this suit the same approval of the contract by the conservator would be

required as would have been necessary if he had continued to reside in this State. The Court refused to so rule; but ruled that the law of the place where the contract was made should govern, and that the disability of the defendant, by reason of the conservatorship, only continued while he resided within the jurisdiction of this."

The court held:

"There is clearly no error in the charge. The disability under which one is placed, with regard to his power to make contracts, by having a conservator appointed over him, is created wholly by statute, and can have no operation where the statute does not operate. It is a well-settled principle that no statute can operate beyond the territorial limits of the State in which it was enacted. While the defendant was residing in the State of Massachusetts he was *sui juris*, and if incapable of managing his own affairs the only mode of securing a legal supervision for him was by proceeding under the laws of the State in the same manner as in the case of any other of its inhabitants. The defendant had, in fact, become an inhabitant and citizen of that State, and had ceased to be a citizen of Connecticut.

"It does not affect the case that the suit is brought in this State. The contract upon which it is brought being a valid and binding one in the State where it was made, is equally valid and binding in this State. It cannot affect the case that the plaintiff knew that the defendant was under a conservator in Connecticut. Since he was legally free from the control of the conservator in Massachusetts, the fact that he had previously been under a conservator in this State was of no importance." (39 Conn. 278.)

Therefore, we submit that plaintiff did have the right to change his domicile from Louisiana to Tennessee, and to become a citizen of Tennessee.

III.

The plaintiff having sufficient understanding and the right to change his domicile and citizenship from Louisiana to Tennessee, it is easy to determine whether or not he has done so. All that is necessary for a citizen of one State to do, in order to become a citizen of another State is to remove himself physically into the State of which he becomes a citizen, with the intention of remaining permanently. The fact of removal, coupled with the *animus manendi*, being all that is necessary to effect the change of citizenship, the Court is not concerned, in the slightest degree, with the motive that may have actuated the removal.

A man may change his citizenship, with the sole motive of invoking the jurisdiction of the Federal court, or for any other purpose, if the change be made with the *bona fide* intention of permanently remaining in the State to which his citizenship is to be changed.

Morris vs. Gilmer, 129 U. S. 328.
Jones vs. League, 18 How. 79.
Case vs. Clark, 5 Mason (U. S.) 70.
Butler vs. Farnsworth, 4 Wash. 101.
Evans vs. Davenport, 4 McLain (U. S.) 574.
Briggs vs. French, 2 Sumner (U. S.) 254.

"A change of domicile may be made through caprice, whim or fancy, for business, pleasure, to secure a change of climate or a change of laws, or for any reason whatever, provided there is an absolute

and fixed intention to abandon one and acquire another, and the acts of the person affected confirm the intention."

In re Newcomb's Estate, 84 N. E. 954, citing *McConnel vs. Kelly,* 138 Mass. 372; 3 Wash. (U. S.) 553; 2 Sumner 254; 129 U. S. 328; 126 U. S. 192.

"A man has a right to change his domicile for any reasons satisfactory to himself. In determining whether there has been such a change from one place to another, the test is to inquire whether he has in fact removed his home to the latter place with the intention of making it his residence permanently or for an indefinite time. If he has, he loses his old domicile and acquires a new one, with all its rights and incidents; and the law does not inquire into the purposes or motives which induced him to make such change. It may be because he prefers the laws of the new place of domicile, or because he can diminish his taxes and other burdens, or because he desires to bring a suit in a court which would not otherwise have jurisdiction. (*Thayer vs. Boston,* 124 Mass. 132.) His status as an inhabitant depends upon the fact that he has made a change of his home, and not upon the motives or reasons which influenced him to do so."

McConnell vs. Kelly, 138 Mass. 372.

The evidence shows that the plaintiff has actually moved to Tennessee, with the intention of remaining there; that he has presented a petition to a court of competent jurisdiction to have his residence and citizenship recognized and his mental condition investigated, in which he swore that he is a permanent resident of that State; he has become an elector of the State of Tennessee; he has married in the State of

Tennessee, and is there keeping house as the head of a family.

Therefore, it is submitted that the plaintiff has changed his domicile and citizenship to the State of Tennessee, and that he is now a citizen of Tennessee.

SECOND SPECIFICATION OF ERROR.

The error, in this connection, results from the failure of the trial judge to distinguish between the effect of judgments determining private rights and those fixing the status of persons. As to the former, the rights adjudicated are *res adjudicata* when the judgment is final and the judgment becomes property like any other thing; whenever the right adjudicated is thereafter questioned, the judgment recognizing or denying that right is absolutely conclusive: on the other hand, no judgment fixing the personal condition or status of an individual is anything more than a provisional fixing of that individual's status and is subject to repeal whenever the individual's condition changes, either by legislation or judicial action or a change of domicile. In this respect personal judgments, or judgments fixing the personal status of a person, may be assimilated to statutory laws; they remain in full force and effect, and everything done by their authority is perfectly valid, so long as they continue in force; when repealed, all things done under them (while in effect) are unaffected by the repeal, and all things done after the repeal depend, for their validity, on the new status created by the repeal. There is no such thing as setting aside or annulling *ab initio* a judgment of interdiction after it has become final any more than a judgment adjudicating property rights can be annulled *ab initio* from the

time it has become final. The difference lies in the effect. The effect of the former is temporary, and varies with a change of condition or change of domicile of the person; the effect of the latter is perpetual. This distinction is plainly recognized in the Civil Code of Louisiana, where the word "repeal" is used in dealing with the termination of the status of interdiction:

> "ARTICLE 420 (407.) TERMINATION OF INTERDICTION. Interdiction ends with the causes which gave rise to it. Nevertheless, the person interdicted cannot resume the exercise of his rights until after the definitive judgment by which the repeal of the interdiction is pronounced."

The Civil Code of Louisiana then provides:

> "Article 421 (408). ID. FORMS IN REVOKING Interdiction can only be revoked by the same solemnities which were observed in pronouncing it."

These articles represent Article 512 of the Code Napoleon, transplanted in the Civil Code of Louisiana, root and branch:

> "L'interdiction cesse avec les causes qui l'ont déterminée: néanmoins la main-levée ne sera prononcée qu'en observant les formalités prescrites pour parvenir à l'interdiction, et l'interdit ne pourra reprendre l'exercice de ses droits qu'après le jugement de main-levée."

As the removal of the effect of the interdiction involves neither the review of the proceedings anterior to the judgment nor the undoing or recision of anything done by the

court pronouncing the interdiction or any right acquired under or by reason of the judgment of interdiction, prior to the repeal of the interdiction, as a result of the finding by a court of competent jurisdiction of a change in the mental condition of the interdict; the proceeding for the removal of the interdict is a new proceeding, entirely, dealing with conditions that did not exist at the time of the pronouncement of the interdiction, and have not, as their object, the review of anything done by that court. The proceedings for repeal are entirely *res nova*, and may, therefore, be prosecuted before any court vested with jurisdiction of the person of the interdict. This seems to the writers so plain upon principle that it might be safely accepted without recurrence to jurisprudence or commentators.

There is no adjudged case by the Supreme Court of Louisiana, but the practice is to treat the removal of the interdict as a new proceeding and to bring it at the domicile of the interdict at the time of the institution of the proceeding. In Louisiana, after a person is interdicted, he is likened to a minor; the domicile of the curator becomes his domicile, and frequently it happens that the court of the domicile of the curator is different from that which pronounced the interdiction. In such cases the proceeding is always brought before the court having jurisdiction of the domicile of the tutor.

The customary law of Louisiana is largely derived from the civil law of France; the courts of Louisiana recognize the authoritativeness of French jurisprudence and give great weight to the opinions of her commentators. In France it is well settled that the "*demande en main-levée d'interdiction*" must be brought before the court vested with jurisdiction of the person of the interdict.

Fuzier-Herman, Vol. 24, pp. 583-584.

786. The question of knowing before what tribunal the demand for the restoration of rights shall be brought, in the silence of statutes, is to be resolved by the common law. Since then, as we shall find (below No. 796), that there is no defendant to the demand to have the rights restored, it should be brought before the court of the domicile of the plaintiff interdict, for it is there that he exercises his civil rights (Art. 102, Civil Code). But where is the domicile of the interdict? If one thinks that the domicile of the interdict has been fixed in an unchangeable manner, at the moment of his interdiction, and the appointment of his curator (see above family meeting and below tutorship), one would say that the court of the domicile is alone competent to determine on the demand to have his rights restored. (Demolombe, Vol. 8, Note 682; Thomine Desmazures, Vol. 2, Note 1054; Bertin, Vol. 1, Note 704.) On the contrary, another will say that it is before the court

786. La question de savoir devant quel tribunal la demande en mainlevee sera portee doit dans le silence des textes, etre resolue par le droit commun. Puisque, comme nous le dirons (*infra.*, n. 796), il n'y a pas de defendeur a la demande en mainlevee, celle-ci sera portee devant le tribunal du domicile de l'interdit demandeur, car C'est la qu'il exerce ses droits civils (art. 102, C. civ). Mais ou est le domicile de l'interdit? Si l'on pense que le domicile de l'interdit a ete fixe d'une facon immuable au moment de son interdiction et de l'organisation de la tutelle (V. *supra*, v°*Conseil de famille*, et *infra*, v° *Tutelle*), on dira que le tribunal du domicile est seul competent pour statuer sur la demande en mainlevee. (Demolombe, t. 8, n. 682; Thomine-Desmazures, t. 2, w. 1054; Bertin t. 1, n. 704.) Dans le cas contraire, on dira que c'est devant le tribunal du domicile de l'interdit que droit etre portee la demande en mainlevee, alors meme que ce n'est pas le domicile de la tutelle. (Bioche, v° *Inter-*

of the domicile of the interdict that the demand for restoration of his rights should be brought, even if it is not the place of the domicile of his curator. (Bioche, Interdiction, Note 134; Carre, Vol. 3, Question 3038; Lepage, Question, p. 583; Le Praticien, Vol. 5, p. 178; Laurent, Vol. 5, Note 332; Huc, Vol. 3, Note 528.)

diction, n. 134; Carre, t. 3, Quest. 3038; Lepage, Quest. 593; Le Practicien, t. 5, p. 178; Laurent, t. 5, n. 332; Huc, t. 3, n. 528.)

787. It held that the individual, who, under the system of the ancient laws, has been interdicted, on account of prodigality, has preserved, nevertheless, the free disposition of his person, and the right to change his domicile, and that it is, therefore, before the judges of his new domicile that he should bring his demand to have his rights restored.

787. Juge que le'individu qui, sous l'empire des lois anciennes, a ete interdit pour cause de prodigalite, a conserve neanmoins la libre disposition de sa personne et le droit de changer de domicile; que c'est donc devant les juges de son nouveau domicile qu'il a du porter sa demande en mainlevee d'interdiction. Paris, 13 germ. an X, Merlin, (S. et P. chr.)

Laurent, Vol. 5, Art. 332.

332. Before what court should the demand for restoration of rights be brought? This question is in controversy. It has been decided, it seems to us, by the silence of the Code. The interdict is the only party interested,

332. Devant quel tribunal la demande en mainlevee doit-elle etre portee? Cette question est aussi controversee. Elle est decidee, nous semble-t-il, par le silence du code. L'interdit n'a pas de contradicteur, il n'y a pas

there is no defendant. Therefore, the matter rests under the system of the common law, under which all judicial acts, which affect a person, are brought at his domicile (Art. 102). On this point, there is no dispute, but there is a doubt on the question of knowing where is this domicile. It is still the common law, which decides the difficulty, as the Code does not deal with it. Now, the interdict has the same domicile as his tutor (Art. 108), consequently the competent court is that of the domicile of his tutor at the moment when the demand is brought. To this, objection is made that the domicile of the interdiction, like that of guardianship, is fixed in an invariable manner, at the place where the interdict was domiciled at the moment of his interdiction. This pretended unchangeableness of domicile of his interdiction has no support in our law. It would conflict with Arts. 105 and 102. Now, the commentator has no right to imagine theories which are in opposition with the law.

de defendeur; des lors on reste sous l'empire du droit commun, d'apres lequel tous les actes juridiques qui interessent une personne se font a son domicile (art. 102). Sur ce point l'on est d'accord, mais il y a debat sur la question de savoir ou est ce domicile. C'est encore le droit commun qui decide la difficulte, par cela seul que le code n'y deroge point; or, l'interdit a son domicile chez sou tuteur (art. 108): donc le tribunal competent est celui du domicile du tuteur au moment ou la demande est intentee. On objecte que le domicile de l'interdiction, comme celui de la tutelle, est fixe d'une maniere invariable au lieu ou l'interdit etait domicilie au moment de son interdiction. Cette pretendue immutabilite du domicile de l'interdiction n'a aucun appui dans nos textes: elle derogerait aux articles 105 et 102; or, l'interprete n'a pas le droit d'imaginer des theories qui sout en opposition avec la loi (1).

Widow Merlin vs. Her Relatives, Tribunal D'Apel De Paris; 13 germ. au X (S. et P. chr.)

"One who, under the regime of the ancient laws, has been interdicted, on account of prodigality, preserves, nevertheless, free disposition of his body and the right of changing his domicile. Therefore, it is before the judges of the new domicile that he should bring his petition to have the effects of interdiction removed.

"In the year 3, the Widow Merlin, living at Gravelines, was interdicted, on account of prodigality. Subsequently, she transferred her domicile to Paris.

"In the year 10, she filed a petition before the court of first instance of Paris to have the effect of her interdiction removed.

"Her relatives, who had brought about the interdiction, were called to give their advice on her petition. They set up that she ought to file her petition before the judges of Gravelines, where they are domiciled, and that the tribunal of Paris was without jurisdiction. There was judgment by which,

"L'individu qui, sous l'empire des lois anciennes, a ete interdit pour cause de prodigalite, a conserve neanmoins la libre disposition de sa personne et le droit de changer de domicile. C'est donc devant les juges de son nouveau domicile qu'il a du porter sa demande en mainlevee d'interdiction.

"En l'an III, la veuve, Merlin, demeurant a Gravelines, est interdite pour cause de prodigalite. Depuis, elle transporte son domicile a Paris.

"En l'an X, elle forme devant le tribunal de premiere instance de Paris sa demande en main-levee d'interdiction.

"Les parens qui avaient coopere a l'interdiction sont appeles pour donner leur avis sur celle demande; ils prelendent qu'elle doit etre formee devant les juges de Gravelines, ou ils sont domicilies, et qu'ainsi le tribunal de Paris est incompetent.

"Jugement par lequel, sans avoir egard au moyen d'incompetence, le tribunal de premiere instance donne

without having considered the plea to its jurisdiction, the tribunal of the first instance removed the effects of the interdiction. It is understood that under our new laws, one cannot be interdicted on account of prodigality.

"On the appeal, the relatives of the Widow Merlin maintained (1) that in her capacity as plaintiff, she should have sued them before their domicile, following the maxim *actor sequitur forum rei;* (2) and, finally, that no law has abolished interdiction on account of prodigality.

"Widow Merlin replies that the maxim *actor sequitur forum rei* is inapplicable, because in reality her parents, although they have given their advice on her petition to have the effects of the interdiction removed, are not defendants; they are only third parties called in the cause, not in their personal interest to defend their rights, but as advisers and in the interest of the interdict. (1) Petition should then be brought before the tribunal of the actual domicile of the said Merlin. Therefore, this main-levee de l'interdiction; Attendu que, D'apres nos lois nouvelles, il n'y a plus lieu a interdiction pour cause de prodigalite. Sur l'appel, les parens de la veuve Merlin soutienment 1° qu'en sa qualite de demande-resse, elle avait du les actionner devant leur domicile, suivant les maximes *actor sequitur forum rei;* 2° au fond, qu' aucune loi n'a aboli l'interdiction pour cause de prodigalite. (V les notes).

"On repond au nom de la veuve Merlin, que la maxime *actor sequitur forum rai* est inapplicable, parce qu'en realite les parens, bien qu'ils aient a donner leur avis sur la demande en main-levee de l'interdiction, ne sont pas defendeurs: ce ne sont que des tiers appeles en cause, non dans leur interel personnel pour defendre leurs droits, mais comme conseils et dans l'interet de l'interdit. (1) La demande a donc du etre portee devant le tribunal du domicile actuel de la cit. Merlin; or, ce domicile, est autre que celui qu'elle avait lors de son interdiction, car elle en a change et elle en avait le droit. Au fond, on soutenait que, depuis le decr. de 1793 et

domicile is different from the one she had at the time of her interdiction, for she changed it, and she had the right so to do. Finally, she contended that since the decree of 1793 and the Const. of the year 3, interdiction could not be pronounced on account of prodigality.

"The special master (commissaire du gouverenement), in siding with the last suggestion, raised an interlocutory question. 'It is,' says he, 'a difficulty that the parties have not raised before you, but which we believe to be the duty of our office to suggest. The tribunal of the first instance has declared itself to have jurisdiction, and, at the same time, it has adjudged the facts, so that by one and the same judgment, it has decided both upon its jurisdiction and on the facts. Such accumulation is contrary to the ordinance of 1667. Art. 3, Title 6, forbids the joining of a judgment as to the jurisdiction with a judgment on the facts. It is necessary that it should first decide on its competency by a first judgment, and, afterwards, render a second judgment on the facts. The law has left to the

la. const. de l'am III, l'interdiction ne pouvait pas etre prononcee pour cause de prodigalite. (V les notes.)

"Le commissaire du gouvernement, tout en se rangeant a cette derniere opinion a eleve une question prejudicielle:

" 'Il est, a-t-il dit, une difficulte que les parties n'ont point elevee devant vous, et que nous croyons devoir vous proposer d'office. Le tribunal de premiere instance s'est declare competent, et en meme temps il a juge le fond; en sorte qu'il a prononce par un seul et meme jugement, et sur la competence, et sur le fond. Ce cumul est contraire a l'ord de 1667. L'art. 3, tit. 6, defend de joindre le jugement sur la competence au jugement du fond; il faut qu'il soit prealablement fait droit sur la competence par un premier jugement, et enquite rendre un second jugement sur le fond. La loi a voulu laisser aux parties la faculte d'appeler separement de l'une ou de l'autre decision. En les confondant dans un seul et meme jugement, le tribunal force les partics a les laisser subsister toutes les deux ou a les combattre toutes les deux. N'ayant pas

parties the opportunity of appealing separately from one or the other decision. In deciding both questions in one and the same judgment, the court forces the parties to let both stand or to appeal both. Not having followed the mandate of the law, its judgment in the case is unsound.

"The court held, considering that said Merlin had, in spite of her interdiction, preserved the free disposition of her person, and consequently had the power to fix her domicile at Paris, where she was able to file her suit to have her rights restored, and, considering that the tribunal of the first instance should not pronounce upon the facts, until it had first decided upon its competency, which it could not do, according to the terms of the law, in one and the same judgment, for these reasons, the judgment, from which the appeal is taken, is annulled, and the parties are sent back for the facts before the tribunal of the first instance, to appear, however, before another section than that before which they had made appearance."

suivi la marche de la loi, son jugement est dans le cas d'etre infirme.'

"DU 13 Germin. An X, jugem. trib. d'app. Paris, sect. 1; les cil. Agier, pres; Mourre, commiss. gouv.; Lacroix-Frainville, av.

" 'LE TRIBUNAL. Attendu que la cit. Merlin avait, malgre son interdiction, conserve la libre disposition de sa personne, et avait consequemment pu fixer son domicile a Paris, ou elle a pu s'adresser pour en avoir la main-levee; Attendu que le tribunal de premiere instance ne devait prononcer sur le fond qu'apres avoir prealablement prononce sur la competence, ce qu'il ne pouvait faire, aux termes de l'ordonnance, par un seul et meme jugement: Par ces motif.

" 'ANNULLE le jugement dont est appel, et. Renvoie les parties a se pourvoir, pour le fond, devant le tribunal de premiere instance de Paris, en se presentant cependant devant une autre section que celle ou elles ont paru.' " Paris, 13 germ. an X; Merlin, (S. et P. chr.)

As, in Louisiana, the proceeding to repeal the interdiction is a new proceeding, in which the correctness of the proceedings had in the suit in which the judgment was pronounced is in no way questioned, reviewed or affected, the sole question presented to the Court being the mental condition of the interdict at a later time; it is perfectly proper to bring the proceeding for the repeal of the interdiction before a different court from that which pronounced the interdiction, when the domicile of the interdict is different. It follows, as an irresistible conclusion, that a proceeding to repeal an interdiction could not be held to deny full faith and credit to the judgment of interdiction, for the very basis of the suit to repeal is full recognition of the personal status of the interdict, created by the judgment of interdiction. The court that investigates the present mental condition of a person previously interdicted, *ex necessitate*, gives full effect to the judgment of interdiction and recognizes in every respect its validity.

THIRD SPECIFICATION OF ERROR.

We think we have demonstrated, in discussing the Second Specification of Error, that the case involves no setting aside or annulling of the judgment of interdiction pronounced by the Civil District Court of the Parish of Orleans. It involves simply the finding of plaintiff's status at a later time.

The municipal personal laws of Louisiana, *ex proprio vigore*, do not extend beyond her borders.

Every State or nation possesses an exclusive sovereignty and jurisdiction within its territory; its laws affect all property and persons residing within it. It may regulate the manner and circumstances under which property is held

and the condition, capacity and state of all persons therein; also, the remedies and modes of administering justice. And it is equally true that no State or nation can affect or bind property not within its territory, or persons not residing within it. No State, therefore, can enact laws to operate beyond its own dominion; if it attempts to do so, it may be lawfully refused obedience. Such laws have no inherent authority extra-territorially. This is the necessary result of the independence of distinct and separate sovereignties. (See Story Conflict of Laws, c. 2; Wheat. Int. Law, pt. 2, c. 2; *Penoyer vs. Neff*, 95 U. S. 722.)

It, therefore, follows that the sovereign State of Tennessee had full power to pass a law providing that any person residing within her limits, who had previously been interdicted, as provided by law, could apply to the County Court of the county in which he was domiciled, or in which his guardianship was, or in which he had property, to have his condition investigated by a jury of two doctors and twelve freeholders, and on the verdict of the jury that he was of sound mind and entitled to be restored to the status of one *sui juris*, to obtain a judgment from the court relieving him of any disabilities resulting from the interdiction.

Such a law is to be found in Chapter 149 of the Acts of the General Assembly of Tennessee for the year 1887, entitled

> "An act conferring jurisdiction on the County Court to declare persons who have been declared lunatics or of unsound mind of sound mind and to restore to them the control of their property."

The title of the act certainly indicates the intention of the Legislature to make it universal in its application; to make it apply, not only to the person who had been inter-

dicted in Tennessee, but also to a person who had been interdicted in Louisiana. There is nothing in the body of the law (which was a special act of the Legislature, not adopted as part of any Code) to restrict its operation in any respect whatever in its application to all persons who had at that time been interdicted, or who might, thereafter, be interdicted.

Section 9 of the act designates the court before which the application may be made:

> "SECTION 9. *Be it further enacted,* The application provided for herein may be made in any county where the applicant may reside, or where his property or guardianship may be." (Record, p. 13.)

At the time of the application of the plaintiff to have his mental condition investigated, in accordance with the provisions of the law of Tennessee, he had resided for more than six months in Memphis. His residence had been with the intention of remaining in Tennessee permanently and never returning to Louisiana. Under these circumstances, it is difficult to understand how it could be argued that the Probate Court of Shelby County, Tennessee, exercising all of the powers of the County Courts of Tennessee (see Record, pp. 11, 12 and 13) did not have jurisdiction to entertain the proceeding investigating plaintiff's mental condition, and to render judgment pronouncing him of sound mind, and, as such, entitled to the status of one *sui juris* in the State of Tennessee. The judgment pronounced by the Probate Court of Shelby County, Tennessee, has been accorded full recognition in Tennessee. Plaintiff has been permitted to become an elector of the State of Tennessee; he has married in the State of Tennessee and resides there with

full recognition of all of his civil rights, as a resident, a citizen, and the father of a family. (Record, pp. 27-29.)

Therefore, it would seem there could be no doubt about the interdiction having been properly repealed and plaintiff's being a citizen of Memphis, Tennessee, *sui juris*.

FOURTH SPECIFICATION OF ERROR.

The Constitution of the United States, Article 4, Section 1, declares that "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State. And the Congress may, by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved and the Effect thereof." Article 905 of the Revised Statutes of the United States prescribes the manner in which the records and judicial proceedings of the courts of any State shall be authenticated and proved, and enacts that the said records and judicial proceedings so authenticated shall have full Faith and Credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken.

The proceeding had in the Probate Court of Shelby County, Tennessee, is one that acts directly on the status of the party whose mental condition is under investigation and is strictly a personal statute. It is well recognized by all of the authorities accessible to research that no one is interested in the interdiction of an individual except the interdict himself, and incidentally the public at large. The interdict is interested in having his property conserved and his person and individual wants properly attended to. Society at large is interested, in so far as securing protection to its individual members against violent acts of an insane

person is concerned, and, generally, in having the interdict properly protected, treated and cured, in order that he may not become a public charge.

A proceeding to have a person interdicted, in all of the States, is a proceeding solely in the interest of the person whose interdiction is sought and the end in view is the protection and cure of the person and the conservation of his property. This is so well recognized in Louisiana that every relation, every wife, and in case relation, husband or wife does not act, a stranger has the right to solicit, or the judge *ex officio* to bring the interdiction suit.

Revised Civil Code:

> "Art. 390 (383). RELATION, HUSBAND OR WIFE CAN SUE FOR. Every relation has a right to petition for the interdiction of a relation; and so has every husband a right to petition for the interdiction of his wife, and every wife of her husband."
>
> "Art. 391 (384). INTERDICTION AT SUIT OF STRANGER OR EX-OFFICIO. If the person who should be interdicted has no relations and is not married, or if his relations or consort do not act, the interdiction may be solicited by any stranger, or pronounced *ex officio by the judge, after having heard the counsel* of the person whose interdiction is prayed for, whom it shall be the duty of the judge to name, if one be not already named by the party."

Correctly speaking, there is no plaintiff in an interdiction suit, except nominally, for the only interests involved are those of the person whose interdiction is sought and the public. So, when we come to consider the proceeding to repeal an interdiction, for the same reason, we find that there is no defendant. And while the Supreme Court of

Louisiana has never had occasion to deal with a suit to set aside an interdiction, we find this proposition well established by adjudications of the French courts. The French jurisprudence would be followed in Louisiana, because the law relating to the repeal of interdictions in Louisiana and France is identical.

Fuzier-Herman, Vol. 24, p. 583-584, No. 791, No. 796.

791. *Held:* That the interdict can provoke the return of his rights and need not be represented or even assisted by his tutor. Bordeaux, 8 mars 822, Audry (S. et P. chr). Riom, 2 dec. 1830, Cormier, (S. 33. 2. 493, P. chr.) Aix, 31 juill, 1884, Mistral, (S. 86. 2. 42, P. 86. 1. 315).

796. In reality, there is no defendant since plaintiff does not claim anything against anyone. *Held,* in this sense, that the interdict who wishes to obtain a return of his rights, is not required to proceed contradictorily with anyone. It is the duty of the public official to examine whether the demand for the return of his rights is well founded, and then it is the duty of a family meeting or its members to oppose it, if they judge it proper.

791. Juge que l'interdit peut provoquer la mainlevee de son interdiction, et n'a pas desoin d'etre presente, ni meme assiste de son tuteur. Bordeaux, 8 mars 822, Audry, (S. et P. chr). Riom, 2 dec. 1830, Cormier, (S. 33. 2. 493, P. chr.) Aix, 31 juill. 1884, Mistral, (S. 86. 2. 42, P. 86. 1. 315).

796. En realite, il n'y a pas de defendeur, puisque le demandeur ne reclame rien *"Contre"* personne. Decide, en ce sens, que l'interdit, qui veut obtenir mainlevee de son interdiction, n'est pas tenu de se donner un contradicteur. C'est au ministire public a examiner si la demande en mainlevee est fondee et ensuite au conseil de famille ou a ses membres de s'y opposer, s'ils le jugent convenable. Cass., 12 fevr. 1916, Martin, (S. et P. chr).

Also *Widow Merlin vs. Her Relatives,* see *supra.*

Chapter 149 of the Acts of the General Assembly of the State of Tennessee for the year 1887 fully recognizes that there could be no defendant in such a proceeding, because of no one being interested therein, except the interdict and the public.

We think that it has been demonstrated *supra* that the proceeding, verdict of the jury and judgment of the Probate Court of Shelby County, Tennessee, had the effect of restoring to plaintiff in Tennessee the status of one *sui juris*. This judgment must be recognized everywhere, unless it can be shown that the court was without jurisdiction or that fraud appears upon the face of the record, because it is hornbook law that a State may authorize proceedings to determine the status of one of its citizens towards inhabitants of all of the other States of the Union, which would be binding within and without the State, by virtue of the Constitution of the United States and Article 905 of the Revised Statutes, independently of the principles of private international law as applied in controversies between the citizens of foreign or strictly independent sovereignties. It cannot be denied that a State has jurisdiction of all persons and things within its boundaries. It cannot be denied that the State has the right to determine the status of its inhabitants. It cannot be denied that the Probate Court of Shelby County, Tennessee, had jurisdiction to entertain the proceedings, and that the proceedings have been conducted in strict conformity with a valid statute of the State of Tennessee.

An inspection of the record of the proceedings in the Probate Court of Shelby County, Tennessee, shows that all of the proceedings had in the various courts of Louisiana, bearing on the mental condition of the plaintiff, were fully disclosed. In fact, they were made the basis of that proceeding, so there is no question of fraud involved; but, any-

way, where a State court has jurisdiction its judgment cannot be attached in a Federal court on the ground of fraud.

In the case of *Simmons vs. Saul*, 138 U. S. 458, this court said:

> "But waiving everything as to the sufficiency of the allegations of fraud, the question arises, do they furnish any grounds for the annulment by a court of equity of the probate proceedings under consideration for the purpose of charging the defendant, as a trustee for the benefit of complainants? We think not, and in this view we are sustained by a number of decisions of this Court, to some of which we now refer.
>
> "*Christmas vs. Russell*, 5 Wall. 290, was an action of debt brought in the United States District Court for the Southern District of Mississippi, on a judgment obtained against the defendant in Kentucky. The defendant pleaded that the judgment had been obtained by the fraud of the plaintiff. A demurrer to the plea having been sustained by that court, the case was brought here and the judgment below affirmed, upon the ground that fraud could not be pleaded to an action in one State upon a judgment obtained in another.
>
> "In *Maxwell vs. Stewart*, 22 Wall. 27, 81, the very same question was presented to this Court, in a similar case, upon the same plea, and this principle was reaffirmed.
>
> "In *Hanley vs. Donoghue*, 116 U. S. 1, 4, the Court said, Mr. Justice Gray delivering the opinion:
>
> "'Judgments recovered in one State in the Union, when proved in the courts of another, differ from judgments recovered in a foreign country in no other respect than that of not being re-examinable

upon the merits or impeachable for fraud in obtaining them, if rendered by a court having jurisdiction of the cause and of the parties.' (Citing *Buckner vs. Filey*, 2 Pet. 592; *McElmoyle vs. Cohen*, 13 Pet. 312, 324; *D'Arcy vs. Ketchum*, 11 How. 165, 176; *Christmas vs. Russell*, 5 Wall. 290, 305; *Thompson vs. Whitman*, 18 Wall. 457."

In the United States District Court, in this case, the contention was made by the defendants that the Court had the right to go beyond the proceedings had in theProbate Court of Shelby County, Tennessee, because judgments rendered in other States of the Union were only entitled to due faith and credit when there had been *personal* service on the defendant; that no court would be required to enforce in a State of the United States a judgment rendered in another State where such judgment would violate the public policy of the State in which it was sought to give it effect.

As to the first of these objections, we will say that, as has been shown above, there was no defendant; there was no necessity for any defendant, from the very nature of the proceeding, and that, in any event, proceedings authorized by a State to determine the status of one of its inhabitants towards a non-resident is entirely excepted from the rule that judgments in one State would not be given full faith and credit in another unless there had been personal service upon the person against whom such judgment was sought to be enforced.

This is made perfectly plain in the case of *Penoyer vs Neff*, 95 U. S. 734, where, to prevent confusion through a misconception of what was being decided in that case, where due faith and credit was denied the judgment of the State

court, because there had been no personal service, Mr. Justice Field, as the organ of the court, said:

> "To prevent any misapplication of the views expressed in this opinion, it is proper to observe that we do not mean to assert by anything we have said that a State may not authorize proceedings to determine the status of one of its citizens towards a non-resident which will be binding within the State, though made without service of process or personal notice to the non-resident. The jurisdiction which every State possesses to determine the civil status and capacities of all of its inhabitants involves authority to prescribe the conditions on which proceedings affecting them may be commenced and carried on within its territory."

In the case of *Haddock vs. Haddock*, 201 U. S. 567, Mr. Chief Justice White said:

> "The requirement of the Constitution is not that some, but that full faith and credit shall be given by States to the judicial decrees of other States; that is to say, where a decree rendered in one States is embraced by the full faith and credit clause, that constitutional provision commands that other States shall give to the decree the force and effect to which it was entitled in the State where rendered. (*Harding vs. Harding*, 198 U. S. 317."

The only exception to this rule is found in those cases where due faith and credit was denied to the judgment, because the court rendering it did not have jurisdiction.

In the case of *Haddock vs. Haddock*, the decision was by a divided court, four to five, and that was a case where a man and woman had been married in New York. There-

after the husband deserted his wife and went into the State of Connecticut, where he acquired a domicile. Thereafter he brought suit against the wife, in which there was a notice by substituted process, in the courts of Connecticut, and obtained a divorce. Subsequently the wife, who had always continued a resident of the State of New York, brought suit in New York against the husband for a divorce, in which personal service in New York was had upon the husband. The husband pleaded the divorce in Connecticut, and asked that due faith and credit be given it in New York. The Court, after an exhaustive review of the authorities, denied due faith and credit to the Connecticut judgment, because the husband, having wrongfully left the wife and gone to Connecticut, was not entitled to claim that there was a matrimonial domicile in Connecticut, where the wife had never been; and the wife never having been within the borders of the State and never having been served with notice, was not subject to the jurisdiction of the Connecticut court. If the matrimonial domicile had ever been established in the State of Connecticut, there is no doubt that the Court would have followed the decision in *Atherton vs. Atherton,* 181 U. S. 155.

In the case of *Cheely vs. Clayton,* 110 U. S. 701, the Court held:

> "If a wife is living apart from her husband, without sufficient cause, his domicile is in law her domicile, and, in the absence of any proof of fraud or misconduct on his part, a divorce obtained by him in the State of his domicile, after reasonable notice to her, either by personal service or by publication, in accordance with its laws, is valid, although she never in fact resided in that State."

In the cases of *Bell vs. Bell*, 101 U. S. 175; *Streitwolf vs. Streitwolf*, 181 U. S. 179, and *Andrews vs. Andrews*, 188 U. S. 14, judgments of State courts were denied due faith and credit in other States, because the courts rendering them were without jurisdiction, because neither of the parties in either of the cases had a *bona fide* domicile within the State in which the divorce was rendered.

The case of *Andrews vs. Andrews* is relied upon by counsel for defendants to sustain his contention that where a judgment is legally rendered by a court of competent jurisdiction in one State, it will not be given due faith and credit in another State, if opposed to the public policy of the latter. However, on examining that case, we find nothing to substantiate this contention, as this court predicated its judgment in that case entirely upon the fact that both the husband and wife were domiciled in Massachusetts and had gone into another State to obtain a divorce for a cause occurring in Massachusetts, which was not a cause for divorce in Massachusetts, in direct contravention of the status of Massachusetts, and that, therefore, the court pronouncing the divorce was without jurisdiction of the subject matter, which jurisdiction was inseparably bound up with the fact of domicile. So there is nothing in that case, in the slightest degree, relevant to this.

FIFTH SPECIFICATION OF ERROR.

In discussing the Fifth Specification of Error, we base our contention squarely on the Constitution of the United States, Article 4, Section 2, which says:

> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

We believe this language of the Constitution has been interpreted to mean that the citizens of each State shall be entitled to all the rights and privileges of citizens of the same class in each of the other States; that a person *sui juris* in Tennessee has the constitutional right in Louisiana to do any and all things in Louisiana that citizens of Louisiana *sui juris* can do in that State. Of course, we appreciate the fact that it had been decided that there are certain rights that are inherent in the citizens of the States, belonging to them by reason of their citizenship, from which the citizens of other States are excluded, such as the right to enjoy the common property of the State, the right of suffrage and other rights of like class; but, as to all rights general in their nature, there can be no discrimination of one State against the citizens of the same class of another State. In Louisiana all citizens *sui juris* have the right to the absolute and unrestricted control of their property, both real and personal; they have the right to bring suits, respecting their personal and property interests, in the courts of the State of Louisiana and of the United States in Louisiana, in those cases where the latter are vested with jurisdiction, and, in this case, plaintiff, a citizen *sui juris* of Tennessee, is claiming only the right to possession and partition of his property in Louisiana, a right which could, undoubtedly, be exercised by any citizen of the same class in Louisiana. There is no doubt that the rights sought to be enforced in Louisiana and denied to him by the United States District Court and the defendants are among those which have repeatedly been held to be under the direct protection of the Privileges and Immunities clause of the Constitution of the United States.

In construing this clause of the Constitution, this court has, as in dealing with other clauses, announced its intention of developing the definition of its meaning by the grad-

ual process of judicial exclusion and inclusion; but, in adopting the language of Mr. Justice Washington in the case of *Corfield vs. Coryell*, 4 Wash. C. C. 371-380, has gone very far towards defining its meaning. In that case Mr. Justice Washington said:

> "The inquiry is, what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are, in their nature, *fundamental;* which belong, of right, to the citizens of all free governments, and which have, at all times, been enjoyed by the citizens of the several States which compose this Union from the time of their becoming free, independent and sovereign. What these fudamental principles are it would perhaps be more tedious than difficult to enumerate. They may, however, be comprehended under the following general heads: Protection by the Government; the enjoyment of life and liberty; with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety; subject, nevertheless, to such restraints as the Government may justly prescribe for the general good of the whole. The right of a citizen of one State to pass through or to reside in any other State for the purposes of trade, agriculture, professional pursuits or otherwise; to claim the benefit of the writ of *habeas corpus*; to institute and maintain actions of any kind in the courts of the State; *to take, hold and dispose of property, either real or personal;* and an exemption from higher taxes or impositions than are paid by the other citizens of the State may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added the elective franchise, as regulated and established by the laws or Constitution of the State in which it is exercised."

In the case of *Blake vs. McLung*, 172 U. S. 248, this court adopted literally Mr. Justice Washington's language in the case of *Corfield vs. Coryell*, 4 Wash. C. C. 371-380.

In the case of *Ward vs. Maryland*, 12 Wall. 430, this court said:

> "Beyond doubt those words are words of very comprehensive meaning, but it will be sufficient to say that the clause plainly and unmistakably secures and protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade or business without molestation; to acquire personal property; to take and hold real estate; to maintain actions in the courts of the State and to be exempt from any higher taxes than are imposed by the State upon its own citizens."

Again, in the case of *Paul vs. Virginia*, 8 Wall. Mr. Justice Field, as the organ of the Court, said:

> "It was undoubtedly the object of the clause in question to place the citizens of each State upon the same footing with citizens of other States, so far as the advantages resulting from citizenship in those States are concerned. It relieves them from disabilities of alienage in other States; it inhibits discriminating legislation against them by other States; it gives them the right of free ingress into other States and egress from them; it insures to them in other States the same freedom possessed by citizens of those States in the acquisition and enjoyment of property and in the pursuit of happiness; and it secures to them in other States the equal protection of their laws. It has been justly said that no provision in the Constitution has tended so strongly to constitute the citizens of the United States one people as this.

> "Indeed, without some provision of the kind removing from the citizens of each State the disabilities of alienage in the other States, and giving them equality of privilege with citizens of those States, the Republic would have constituted little more than a league of States; it would not have constituted the Union which now exists."

So, it would seem, as a matter of strict constitutional right, that plaintiff would be entitled to the possession and control of his property in Louisiana, and this entirely independent of any recognized principle of comity or private international law.

SIXTH SPECIFICATION OF ERROR.

In treating the Sixth Specification of Error independently of the fifth, it will not be necessary for us to discuss the conflicting views of writers on private international law. As was stated by this Court in the case of *Strader vs. Graham*, 10 How. 93:

> "It is elementary that every State has an inherent right to determine the status or domestic or social condition of persons domiciled within its territory, except in so far as the powers in this respect are restrained by duties or obligations imposed upon them by the Constitution of the United States."

Now, it follows from this principle that whatever force or effect the laws of one State or nation may have in the territories of another, must depend solely upon the laws and municipal regulations of the latter, upon its own jurisprudence and policy, and upon its own express or tacit consent.

Judge Story observes, in his Conflict of Laws,

> "that a State may prohibit the operation of all foreign laws, and the rights growing out of them, within its territories. And that when its code speaks positively on the subject it must be obeyed by all persons who are within reach of its sovereignty; when its customary unwritten or common law speaks directly on the subject it is equally to be obeyed."

Nations, from convenience and comity, and from mutual interest, and a sort of moral necessity to do justice, recognize and administer the laws of other countries. But, of the nature, extent and utility of them, respecting property, or the state and condition of persons within her territories, each nation judges for itself; and is never bound, even upon the ground of comity, to recognize them, if prejudicial to her own interests. The recognition is purely from comity, not from any absolute or paramount obligation.

Judge Story also says:

> "The true foundation and extent of the obligation of the law of one nation within another is the voluntary consent of the latter, and is inadmissible when they are contrary to its known interests."

And he adds:

> "In the silence of any positive rule affirming or denying or restraining the operation of the foreign laws, courts of justice presume the tacit adoption of them by their own government, unless they are repugnant to its policy or prejudicial to its interests."

Therefore, it is a question—a very important question in the case—whether the law of Louisiana would recognize,

independently of the Constitution of the United States, the change in the status of the plaintiff by reason of his change of domicile to Tennessee and the proceedings had in the Probate Court of Shelby County, Tennessee, in accordance with the law of Tennessee, by which the change in his status was effected.

We say the law of Louisiana, because a judicial tribunal in one State or nation can recognize personal rights acquired by force of the law of any other State or nation only so far as it is the law of the former State or nation that those rights should be recognized. But, in the absence of positive law to the contrary, the will of every civilized State must be presumed to be to allow such effect to foreign laws as is in accordance with the settled rules of private international law. And legal tribunals are bound to act on this presumption. It may be assumed that the motive of the State in allowing such operation to foreign laws is what has been termed comity. But, as has justly been said (per Chief Justice Taney, 13 Pet. 589), it is the comity of the State, not of the court. The judges have nothing to do with the motive of the State. Their duty is simply to ascertain and give effect to its will. And when it is found by them that its will to depart from a rule of international law has not been manifested by the State, they are bound to assume that its will is to give effect to it. Undoubtedly, every sovereign State may refuse to recognize a change wrought by the law of a foreign State, on the status of a person, while within such foreign State, even in cases where the rules of international law require that recognition. Its will to refuse such recognition may be manifested by what we term statute law, or by the customary law of the State. It is within the province of its judicial tribunals to inquire and adjudge whether it appears from the statute or

customary law of the State, to be the will of the State to refuse to recognize such changes of status by force of foreign law, as the rules of the law of nations require to be recognized.

We must, therefore, inquire whether the State of Louisiana has by its statute, or its custory common law as evidenced by the decisions of its highest court, ever taken any position or manifested its will to adopt any policy with reference to the change of the status of a person formerly domiciled within her borders,who has changed his domicile to a sister State or a foreign country, by reason of the change of status effected in accordance with the laws of the latter.

. It is generally agreed by writers upon private international law, and the rule has been judicially applied in a great number of cases, that whenever any question may arise concerning the status of a person it must be determined according to that law which has next previously rightfully operated on and fixed that status.

This question has been discussed most exhaustively by Chief Justice Gray, as the organ of the Supreme Court, in the case of *Ross vs. Ross,* 129 Mass. 443. In that case we have found the most able and exhaustive discussion of the entire question that the writers have been able to obtain access to. Chief Justice Gray says:

> "The status or condition of any person with the inherent capacity of succession or inheritance is to be ascertained by the law of the domicile which creates the status, at least when the status is one which may exist under the laws of the State in which it is called in question, and when there is nothing in those laws to prohibit giving full effect to the status and capacity in the State of the domicile.
>
> "We are not aware of any case in England or America in which change of status in the country of

> the domicile, with the formalities prescribed by its laws, has not been allowed full effect as to the capacity thereby created of succeeding to or inheriting property in any other country, the laws of which hold a like change of status, in a like manner, with a like effect, under like circumstances."

Let us now determine what position the State of Louisiana has taken with respect to the effect of the removal of domicile to another State, and the change of status effected in conformity with the laws of the latter.

Upon investigation, we find that the State of Louisiana is fully committed to the rule that allows full effect to the status of domicile, and that the status of a person must be determined according to the law which has next previously rightfully operated on and fixed that status.

The first case decided in Louisiana was that of *Lunsford vs. Coquillon*, 2 Martin (N. S.), 401, which was a suit brought by the plaintiff to have her freedom recognized. She claimed that her owner had moved from Kentucky to Ohio, with the intention of residing there, taking her thither as a part of his family; that the Constitution of Ohio provides "there shall be neither slavery nor involuntary servitude in the State"; that she resided for several years in her owner's family in Ohio, continuing to serve him as before; that, having made an attempt to assert her freedom, he defeated it by her forcible removal into Kentucky, from whence she was brought back into Ohio, and afterwards into Louisiana. The Louisiana Court applied the rule of Huberus:

> *"Qualitates personales certo loco alicui jure impressas ubique circumferi et personam comitari, cum hoc effectu ut ubivis locorum, eo jure quo tales personae alibi gauderint vel subjecti sunt fruentur et subjiciantur. (2 Huberus, 541, de confl. legum.)"*

That case was affirmed by the Supreme Court of Louisiana in the following cases:

Louis, f. m. c., vs. Cabarrus et als., 7 La. 170; *Smith, f. w. c., vs. Smith*, 13 La. 445; *Marie Louise vs. Moret et al.*, 9 La. 475; *Josephine vs. Polkney*, 1 An. 329; *Eugenie vs. Percival et al.*, 2 An. 180; *Arsene vs. Peneguy*, 2 An. 621.

In *Augusta Insurance and Banking Company vs. Morton*, 3 An. 417, a case where a married woman domiciled in Maryland, mortgaged her real estate in Louisiana, for the benefit of her husband, the law of Maryland permitting the wife to bind her property for the benefit of her husband, which was prohibited by the law of Louisiana, the Supreme Court of Louisiana, through Chief Justice Eustis, held that the law of Louisiana, prohibiting the wife to bind her property for the benefit of her husband, was a personal statute, and had no application to Mrs. Morton, who was domiciled in Maryland, and that her capacity was regulated by the law of her domicile, recognizing the principle that disabilities resulting from the condition of persons is personal, and that contracts valid at the place of domicile were valid without reference to the situation of the property, so far as the capacity of the party to contract is concerned.

In *Roberts vs. Wilkinson*, 5 An. 369, a case where the defendant, a married woman domiciled in Louisiana, to avoid the statute of that State prohibiting her from contracting without the consent of her husband, went into Mississippi, and executed a mortgage, it was held that the contract was

void, because made without the consent of her husband. The Court said:

> "Our conclusion is that the obligations of the appellants, dependent on her personal condition, and resulting from the notes sued upon must be determined according to the law of her domicile, and not those of the State of Mississippi."

In *Baehr et al. vs. Terry,* 105 La. 480, a case where a wife, domiciled in Missouri, bound herself on notes, payable in Louisiana, executed by her in the State of her domicile, for a debt of her husband, the wife being permitted by the laws of the State to so obligate herself, and afterwards the parties moved to Louisiana, and were sued on the notes she had thus executed while in Missouri, the Supreme Court of Louisiana said:

> "We differ with the able and learned counsel in his contention that, because the notes are made payable in Louisiana, the capacity of the defendant to make them must be tested by Louisiana law. Capacity to contract is tested by the law of the domicile. (Ror. Int. St. Law, p. 263.) Nor do we agree with the counsel's contention that, assuming defendant to have been liable on the notes before she came to this State, the law of this State, prohibiting wives from binding themselves for the debts of their husbands, precludes recovery against her."

The most recent case in Louisiana is that of *Marks vs. Germania Savings Bank,* 110 La. 659.

Mrs. Marks, the plaintiff, was domiciled in Mississippi. She married A. F. Marks, in the City of New York, where

afterwards she and her husband had their domicile. Under the law of New York, the wife has the right to bind her property for her husband's debts. In Louisiana, the wife was prohibited from so doing. While husband and wife were domiciled in New York, the wife returned to Louisiana and pledged a lot of securities to the Germania Savings Bank of New Orleans, to secure a loan of $55,000. The loan was not repaid, and the bank, under the contract of pledge, sold the securities in payment of the loan. Subsequently, Mrs. Marks brought suit to recover the securities from the bank, upon the ground that at the time of her marriage to her husband, her husband was domiciled in the City of New Orleans, La., and that, as Louisiana wives were prohibited by law from binding their property for the benefit of their husbands, the act of pledge was a nullity. The Supreme Court of Louisiana found, as a fact, that Mr. and Mrs. Marks were domiciled in New York, and held that the law of the domicile governed, and the pledge was valid.

The case of the *Succession of Caballero*, 24 An. 576, perhaps goes as far to show that the policy of Louisiana is as we have stated it, as any that can be found.

In that case, it appears that J. M. Caballero, a native of Spain, came to New Orleans in 1832, became a citizen of the United States and lived in New Orleans until 1856, when he returned to his native country, stopping on his way at Havana, where he remained a short time. During his residence in Louisiana he lived in concubinage with a colored woman, by whom, it seems, he had several children, the plaintiff in the case being the only one of them living. She was born in February, 1840. Caballero made an olographic will, dated March 21, 1852, and ratified it in

January, 1856. In March, 1856, Caballero left New Orleans for Cadiz, in Spain, and at Havana, in April following, he was married to Carolina Visinier, the plaintiff's mother. He proceeded to Spain, where he resided about three years, and then returned to New Orleans, where he died in the spring of the year 1866. It was found by the Court that when Caballero left the United States for Spain, it was with the purpose of remaining there permanently, and that he was, therefore, domiciled in Spain from the time he entered Spanish territory; that by his marriage with his concubine in Havana, although his marriage with her was prohibited by law in Louisiana, his offspring was legitimated, and that, notwithstanding the subsequent return of her father and mother to Louisiana, her (the daughter's) status as a legitimate child remained, and as such she was entitled to inherit her father's estate in Louisiana.

In the case of *Scott vs. Key et al.*, 9 An. 236, an infant born out of wedlock, son of a resident of Arkansas, was, by a special act of the Legislature of that State, legitimated, or put upon the same footing as if the parents had been married at the time of his birth. Subsequently he and his father removed to Louisiana. The question was whether he could inherit, as a legitimate child, property in Louisiana. The Court held that the status of legitimacy, fixed by the personal statute of Arkansas, accompanied the child into Louisiana, and he was entitled to inherit as a legitimate son.

In the case of *Emma W. Hansell vs. Henry H. Hansell*, 44 An. 548, the Supreme Court of Louisiana held that a person domiciled in Philadelphia, who was notoriously insane and had been confined in an insane asylum at his domicile

for more than three years, must be treated in Louisiana as sane, and that the courts in that State had no jurisdiction of his person and could render no decree affecting his personal status.

See, also, *Interdiction of Dumas*, 32 An. 679.

There is no statute in Louisiana prohibiting full recognition of a change of status effected in conformity with the personal statute of the State into which a person may have removed from Louisiana; surely, the decisions cited above must carry conviction that it is the settled policy of Louisiana to recognize, to the fullest extent, such change of status. In fact, it would be difficult to find a State more unmistakably committed to the principle that the status of the domicile accompanies a person wherever he may go; that whenever any question may arise concerning the status of a person, it must be determined by that law which has next previously rightfully operated on and fixed that status. Nor is the position of Louisiana, with respect to giving full force to the status of the domicile different from that of Tennessee.

In the case of *Robinson vs. Queen*, 87 Tenn. 445, the doctrine was given full effect. In that case the Supreme Court of Tennessee held that the judicial proceedings, under the laws of the State of Kentucky, emancipating married women from the disability of coverture, would be recognized and enforced in Tennessee to the extent of allowing an action to be brought and maintained in the courts of that State against such married woman, on a note made by her in the State of Kentucky as surety for her husband, clearly recognizing that her status as a person *sui juris* fixed by judicial proceedings in the State of her domicile, would have full force and effect in Tennessee.

In the case of *Woodward vs. Woodward*, 87 Tenn. 644, we have a case directly analogous to this. In that case a minor, Rosa P. Woodward, both of her parents being dead, had appointed to her by the Probate Court of Shelby County, Tenn., a guardian, Emmet Woodward. After the appointment of the guardian, the minor was adopted by C. Dickman. Several years thereafter, she resided in Tennessee with her adopted father, and then removed with him and his family to Louisiana. Upon arriving at the age of eighteen years, she being then a resident of Louisiana, the minor presented a petition to the court of her domicile in Louisiana, asking that, in pursuance of the Louisiana law, she be relieved of all the disabilities attaching to minors, and empowered to manage her affairs as a person of full age. Judgment was rendered, fully emancipating her. In Tennessee, the minor becomes of full age and *sui juris* at twenty-one years. Rosa P. Woodward, after being emancipated by the Louisiana Court, brought suit in the Probate Court of Shelby County, Tennessee, against her guardian for $8,000 belonging to her, in which she alleged her domicile and residence in the State of Louisiana, and that she had been fully emancipated from the disabilities of infancy under and in pursuance of the statute of that State authorizing, in certain cases, the emancipation of persons who have attained the age of eighteen; that, in consequence of such decree, she was, under the laws of the State of Louisiana, of full age, and as such entitled to demand and receive her estate.

To her petition Emmet Woodward, the guardian, interposed a demurrer, upon the ground that petitioner was still a minor, under twenty-one years of age; that the pro-

ceedings had in the courts of Louisiana could have no extra-territorial effect by reason of the want of jurisdiction in said courts over the estate of the ward situated in Tennessee; that the proceedings had in Louisiana are unknown to the laws of Tennessee and opposed to the policy of Tennessee law and contrary to the interests of the citizens of Tennessee, and would, therefore, not be recognized in the courts of Tennessee; that the said guardian is lawfully in possession of said funds under the laws of Tennessee, and has been guilty of no breach of duty in relation thereto; and that said petitioner, being a minor, cannot maintain the action in her own name.

The probate judge sustained the demurrer and dismissed the petition.

Thereupon, petitioner appealed to the Supreme Court of Tennessee. That Court, in a very elaborate review of the authorities, and after quoting with approval from the text of Wharton's Conflict of Laws, Section 114: "A foreigner who is capable of business at his domicile must be recognized as so capable by our laws, even though if domiciled among us he would be incapable," and the rule laid down by Pothier: "The change of domicile delivers persons from the control of the laws of the place they have quitted, and subjects them to the laws of the new domicile they have acquired,"—gave full effect to the judgment of emancipation rendered by the Louisiana Court, and ordered the delivery by Emmet Woodward, the guardian, of all the property of Rosa P. Woodward, the emancipated minor, to her.

So, in Tennessee, as well as Louisiana, we have an unqualified adoption of the principle of international law, as laid down by Boullenois:

> "The whole world acknowledges that the state of the person depends on his actual domicile, and that the natural sequence is that if a person changes his domicile and the law of the new domicile is contrary to that of the old one, the state and condition of the person changes accordingly. (2 B. Observ. 32, p. 1013.)"

And as the private international law governing the States of Louisiana and Tennessee is a matter to be determined by those States, except in so far as the matter is regulated by the Constitution of the United States (Story on Conflict of Laws, Section 51), it would seem that the status given to the plaintiff by the law of Tennessee, the place of his residence and citizenship, must be recognized in Louisiana, even were the matter not governed by the Constitution of the United States.

Most of the pertinent cases to be found in the books refer specifically to incapacities resulting from minority, marriage and legitimacy; but there can be no difference, whether the incapacity may result from one cause or another in discussing the principle recognized by a particular State, as to whether, and to what extent, the personal status of the domicile of an individual shall be given effect. In his able work, Mr. Story says:

> "SECTION 99. In discussing this subject, our attention has been more particularly drawn to the common cases of incapacity, resulting from minority, and marriage, and legitimacy. But the principles which apply to them are not materially different from those which apply to cases of idiocy, insanity and prodigality. The extent of the rights and authorities of guardians, curators, parents and masters over persons subjected to their control, or committed to

> their charge, may in a general sense be said to depend, so far as they are to be recognized or enforced by and in foreign nations, upon the same common ground of international jurisprudence, that is to say, upon a general comity, founded in the sense of mutual interests, mutual benefits, and mutual obligations to cultivate peace and harmony."

We leave this branch of the case with the conviction that we have demonstrated there is nothing in the public policy of Louisiana that would prevent giving full effect to the status of domicile of the plaintiff. On the contrary, Louisiana has repeatedly, through its courts, committed the State to a full recognition of the status of domicile.

SEVENTH SPECIFICATION OF ERROR.

The articles of the Civil Code, naming the causes of interdiction, are the following:

> "ART. 389 (382). PERSONS SUBJECT TO INTERDICTION. No person above the age of majority, who is subject to an habitual state of imbecility, insanity or madness, shall be allowed to take care of his own person and administer his estate, although such person shall, at times, appear to have the possession of his reason."
>
> * * * * * * * *
>
> "ART. 422 (409). WHO MAY BE INTERDICTED. Not only lunatics and idiots are liable to be interdicted, but likewise all persons who, owing to any infirmity, are incapable of taking care of their persons and administering their estates. Such persons shall be placed under the care of a curator, who shall be appointed and shall administer in conformity with the rules contained in the present chapter."

We have also Act No. 100 of the General Assembly of the State of Louisiana for the year 1890, which provides:

> "That any person who is an inebriate or habitual drunkard and by reason of said infirmity shall be unable to support himself or his family, shall be liable to be interdicted, and shall be placed in the custody and care of a curator who shall have full authority and control of the person of said inebriate with power to place him in a hospital or other institution for the treatment and cure of said infirmity."

Upon examining the pleadings in the interdiction suit brought in the Civil District Court of the Parish of Orleans, we find, in the original petition, that the sole specification upon which it was sought to base the interdiction was

> "that, owing to infirmities, the said Fernand Vaughan Gasquet is incapable of taking care of his person or administering his property, and that it is, therefore, advisable and necessary that he be interdicted in accordance with law." (Record, p. 46.)

An exception of vagueness was filed to this petition, and the plaintiffs in that suit recognized that they should set up the causes for the interdiction more particularly. So, in a supplemental and amended petition filed in response to the exception, we have the particular causes enumerated in the numbered paragraphs from II to VII of that petition, inclusive. (Record, pp. 52, 53.)

In Paragraph II of that petition it is averred

> "that Fernand Vaughan Gasquet is subject to an habitual state of insanity and madness, although he, at times, while under the influence of narcotic drugs, appears to have the possession of his reason."

Paragraphs III, IV, V and VI recite that in 1912 he was indicted by the Grand Jury of the Parish of Orleans for shooting with intent to murder; that the Grand Jury found not a true bill, because of insanity; that he was committed to the criminal ward of the Louisiana State Asylum for the Insane at Jackson, La., until such time "as he is cured and of sound mind"; that, for lack of proper accommodations in the Louisiana State Asylum, he has remained in the custody of the Criminal Sheriff of the Parish of Orleans, and is now held in his custody.

Paragraph VII avers

> "that Fernand Vaughan Gasquet is addicted to the abuse of alcohol and addicted to narcotics; that he has a psychopathic constitution; that he has hardening of the arteries due to nephritis affecting his mental condition, and suffers from delusions. And that said Fernand Vaughan Gasquet is incapable of taking care of his person or administering his property, and it is, therefore, advisable and necessary that he be interdicted in accordance with law."

The decretal part of the judgment (Record, p. 58) reads as follows:

> "It is ordered, adjudged and decreed that there be judgment in favor of plaintiffs and against defendant, Fernand Vaughan Gasquet, decreeing that said Fernand Vaughan Gasquet is incapable of taking care of his person and administering his estate, and pronouncing his interdiction; costs of this proceeding to be paid out of the estate of said defendant."

The judgment of interdiction, of course, must be read as being directly responsive to the allegations of the petition

and the supplemental petition; we do not think that those allegations can be read without concluding that the interdicton of plaintiff was sought on the ground that he was subject to an habitual state of insanity and madness. There is no charge that he is an inebriate or a habitual drunkard. On the contrary, the plaintiffs in the interdiction suit, after averring his insanity and madness, make the statement that, while under the influence of narcotic drugs, he appears to have possession of his reason.

It is true, it is stated, that plaintiff is addicted to the abuse of alcohol and addicted to narcotics, but the alleged addiction to the abuse of alcohol and to narcotics is referred to merely as a mask for a habitual state of insanity and madness; for, it is said, he appears to have the possession of his reason while under the influence of narcotic drugs.

It is true that inebriates and habitual drunkards may be interdicted in Louisiana; but, it is equally true that they may be interdicted only because their mental condition has been affected to such an extent as to deprive them of reasonable self-control.

The term "habitual drunkard" has been defined in Act 157 of the General Assembly of the State of Louisiana for the year 1894 as follows:

> "SECTION 4. A drunkard, as mentioned in the foregoing sections of this act, shall be deemed to include any person who has acquired the habit of using spirituous, malt or fermented liquors, cocaine or other narcotics, to such an extent or degree as to deprive him of reasonable self-control."

Any person deprived of reasonable self-control is insane; because, without self-control, there can be no sanity. At this time it cannot be denied that the excessive use of

drugs or alcohol produces insanity; that when a person becomes insane from their use he is treated by the courts as any other insane person. When, by the use of such agents, a person deprives himself of the ability to control himself he stands, in the eyes of the law upon an equal footing with a person insane through idiocy, imbecility or madness—is a fit subject for interdiction.

The Supreme Court of Louisiana attempted to state upon what ground plaintiff's interdiction was being sought, and that Court said in the case of *Interdiction of Gasquet*, 136 La. 964:

> "The defendant's infirmity, which the plaintiffs contend renders him incapable of taking care of himself or his estate, is that he has alcoholic insanity and is a victim of the morphine habit."

This statement of the contention of the plaintiffs in the interdiction suit is in full accord with their pleadings, in which they aver insanity and madness, which is masked by the effect of narcotic drugs.

The writers do not conceive it possible, in view of the attitude taken by opposing counsel in the courts of Louisiana, they will argue in this court that the plaintiff is sane, and, though sane, was interdicted and should remain perpetually interdicted, because he was addicted to alcohol and narcotic drugs. If such a contention is made, nothing can be found to sustain it in the law of Louisiana, which allows interdiction only where there is an unsoundness of mind. Any other conclusion would be diametrically opposed to common sense.

The habitual drunkard is one who is habitually drunk. A person who is drunk is never in possession of all of his senses, otherwise he is not drunk. An inebriate is like unto

the drunkard, except that instead of being drunk from alcohol he is drunk from drugs. Any person who habitually drinks alcohol, according to the medical profession, abuses its use, and anyone who takes a narcotic drug, except under the direction of a physician for the purpose of allaying physical pain, abuses its use; yet the use of alcohol and narcotic drugs by people in Louisiana does not render them subject to interdiction in that State any more than in the District of Columbia. If all habitual drinkers and all users of narcotic drugs in the United States were subjected to interdiction it would be beyond the possible resources of the nation, if we can believe what we see and what we read in the medical journals, to construct sufficient asylums in which to confine this large part of our population.

Our learned professions would be decimated and those who labor with their hands so reduced in numbers that it would be impossible to care for and feed the enormous population of such asylums, if it were possible to build the asylums. We must look to the reason of every law. When we look to the reason of the act of the Louisiana Legislature providing for the interdiction of inebriates and habitual drunkards, we must accept those words as meaning what they clearly do: those who by reason of the excessive use of alcohol and narcotics have been rendered insane, and, being insane, are governed, not only by the statute, but by the general law relating to persons insane from other causes.

The writers can conceive no reason why a person interdicted on account of insanity, resulting from the excessive use of alcohol and narcotics, when domiciled in Tennessee, would not be entitled to the benefit of Chapter 149 of the Acts of the General Assembly of the State of Tennessee for the year 1887, which deals not only with people who have been declared insane; but also with people who have been

adjudged to be of unsound mind, particularly where the unfortunate victim of the interdiction has been completely cured of his affliction, as the plaintiff in this case. (Record, p. 29.)

EIGHTH SPECIFICATION OF ERROR.

An examination of the pleadings in this case and the testimony shows that to the Bill of Complaint, in addition to the denial of plaintiff's domicile and citizenship and the fact of his being *sui juris*, defendants urged the further defense that he was not entitled to an accounting and a partition of his property, because his property consisted of an interest in the succession of his mother, which was being administered in the Civil District Court of the Parish of Orleans, and was in the possession and control of that court, which alone is seized with jurisdiction and control thereof; and that Charles Payne Fenner, testamentary executor, could not be forced to account before any other court than that by which he was appointed and which has possession of the property; it is denied also that he has the right to demand a partition of his property before this court.

In connection with this defense, the Judge of the District Court of the United States said:

> "There is no dispute as to plaintiff's interest in his mother's succession and the amount due him, and, therefore, nothing for the court to pass upon in that respect. Partitions in matters of this kind in Louisiana are usually made by notarial act, through a notary appointed by the Court. This could not take place until the executor had filed his account. It is not alleged or suggested that the executor has been guilty of any breach of trust, or even negligence, in performing his duties. The executor, the defendant herein, is an officer of the Louisiana Probate Court,

> and that court is the proper tribunal to require him to file an account of his administration. The administration is not ended and there is some doubt as to the jurisdiction of this Court to entertain this suit at this time. (*Waterman vs. Canal Bank*, 215 U. S. 45.) But be that as it may, it is well settled that in matters of this kind Federal courts administer the laws of the States and are bound by the same rules that govern the State tribunals. (*Security Trust Company vs. National Bank*, 187 U. S. 211.)" (Record, p. 69).

In arriving at the conclusion just quoted, we are very much afraid that the learned judge of the court *a qua* overlooked the real issue before the court, which was whether or not this plaintiff had the right to an accounting from the executor of his mother's succession, who had never accounted to any court, and a partition of his property, which is the absolute right of every person under the Louisiana law.

R. C. C.:

> "Art. 1289 (1215). RIGHT TO PARTITION. No one can be compelled to hold property with another, unless the contrary has been agreed upon; any one has a right to demand the division of a thing held in common by the action of partition."

It is true that the prayer of the Bill of Complaint is that Charles Payne Fenner, executor of the last will and testament of Mrs. Louise Lapeyre Gasquet, deceased, be ordered to file full account of his gestion of the estate of Mrs. Louise Lapeyre Gasquet, deceased, and to deliver unto plaintiff his undivided one-third interest in the *residuum* thereof; and that a partition of the *residuum* of said succession or estate of said Mrs. Louise Lapeyre Gasquet, deceased, between plaintiff and Mrs. Martha Gasquet, wife of George G.

Westfeldt, and Mrs. Evelyn Gasquet, wife of Charles Payne Fenner, be made, and after an adjustment of accounts between plaintiff and defendants the plaintiff's share of said estate be delivered to him. But this prayer was not intended to be construed as demanding of the trial court anything more than the recognition of plaintiff's right to have an account of the executor of his mother's succession and of his right to have a partition of the *residuum* of said succession. That such was the sole issue before the court is fully shown by the testimony of Mr. Charles Payne Fenner, the executor, who is also one of the most learned and astute members of the Louisiana bar, at page 10 of the Record:

> A. No. sir. I would just like to state before I leave the stand that so far as I am concerned as executor, I am, and have always been not merely willing but anxious to render an accounting and to have a partition of this estate among the heirs just as soon as it can be legally effected, and the only reason I have not rendered an accounting and effected a partition among the heirs is that I conceive that the situation has been up to this time and is to-day such that it is impossible for me to do so; in other words, I conceive there is no one contradictorily with whom I could render an account in so far as the share of the plaintiff in this case, Fernand V. Gasquet, is concerned.

Cross-examination by Mr. Wall:

> Q. I understand in the statement which you have just made, that your objection to rendering an account is that you believe that Fernand V. Gasquet is not *sui juris* and not capable of receiving validly an accounting by you in so far as he is concerned.
>
> A. Yes, sir.
>
> Q. And that he has no representative that could properly represent him?
>
> A. Yes, sir.

The mechanics of the account and the partition, it was presumed, would be ordered in accordance with correct practice. There is no pretense of any malfeasance on the part of the testamentary executor. The suit was brought because he denied the right of this plaintiff to an account and because the other two defendants denied the right to a partition; the object of the suit is to have plaintiff's right to an account and to a partition recognized by the United States District Court. When the Bill of Complaint was drawn counsel was fully cognizant of those cases, holding that United States courts could not exercise probate jurisdiction; it is not desired to have the United States court exercise any probate jurisdiction in this matter. Plaintiff would be perfectly well satisfied to have his right to an account from the State court recognized by the United States District Court as being due to him by Charles Payne Fenner, testamentary executor, and his right to a partition of the property against the other two defendants recognized against them; and the manner of the accounting referred to the State court. As to a reference of the partion of the *residuum* of the estate to the State court, we will say that we do not understand that there will be any necessity for so doing. After an account is rendered by the testamentary executor there is no reason why the estate could not be partitioned in accordance with the laws of Louisiana by the United States District Court, except for the fact that it would involve an adjustment of accounts between the two defendants, who are heirs and citizens of the same State, as well as an adjustment between the plaintiff and them. However, the rendition of the account and the making of the partition, in our estimation, belong to the mechanics of the case, and can be handled by this Court in whatever way it may deem proper, under the prayer for general relief.

The very cases cited by the Judge of the District Court establish the absolute right of the plaintiff to have his right to an account and a partition and possession of his property recognized by the United States District Court.

The prayer in the case of *Waterman vs. Canal-Louisiana Bank Co.*, 215 U. S. 41, indicates sufficiently, for the purposes of discussion, the facts of that case. There, one of the heirs-at-law of the decedent sought to have certain legacies lapsed, an administration of the estate by the United States court, and herself recognized as the owner of the *residuum*, and the prayer followed, for all general and equitable relief. In that case this Court held, after an exhaustive review of the authorities, that the plaintiff was not entitled to an administration of the succession by the United States court; but that she was entitled to have her right to the *residuum* adjudged by that court:

> "Wherefore, your oratrix prays that this Court do order, adjudge and decree (1) that the particular legacy contained in the last will and testament of Caroline Stannard Tilton, deceased, to so-called 'Home for Insane,' and also the interest of said legatee in the residue or *residuum* of said testatrix's estate, be declared caducous, to have lapsed, because of the uncertainty and non-existence of said legatee; (2) that it be further declared and decreed that Robert Waterman and Frederick Waterman have renounced and abandoned all their right, title and interest as heirs of said Caroline Stannard Tilton, deceased, in the said lapsed and caducous legacy made in favor of the so-called 'Home for Insane'; (3) that it be further adjudged and decreed that your oratrix, as the nearest sole heir and next of kin of said Caroline Stannard Tilton, deceased, capable of inheriting, is alone entitled to the amount of the caducous and lapsed special legacy bequeathed to the said so-called

'Home for Insane,' for the sum of three thousand dollars ($3,000.00), and to the proportionate share of said non-existing and uncertain legatee in the residue of the estate of said Caroline Stannard Tilton, and that the Canal-Louisiana Bank & Trust Company, executor of said deceased, Caroline Stannard Tilton, be condemned to pay over and deliver to your oratrix the whole amount of said caducous special legacy, together with the proportionate share and interest of said so-called 'Home for Insane' in the residue of the estate of said deceased remaining after the payment of the particular legacies and the costs of administration of her estate, and for such further sum as the Court may find to be justly due and owing unto your oratrix as legal heir and next of kin of the said Caroline Stannard Tilton; (4) and that it be further ordered and decreed that the Christian Woman's Exchange is not a charitable institution or entitled as such under said will to participate or receive any share or portion of the residue of the estate of said deceased; (5) and that an account be taken of the personal estate and effects of the said testatrix coming to the hands of said executor, or of any person or persons by its order or for its use, and also of the said testatrix's funeral expenses, debts, legacies and costs of administration, and especially showing the residue remaining in the hands of the said executor after making the aforesaid deduction, and that the same may be applied in due course of administration, and that for these purposes proper directions may be given.

" 'And your oratrix further prays for all general and equitable relief, as well as all costs.'

"From an early period in the history of this court cases have arisen requiring a consideration and determination of the jurisdiction of the courts of the United States to entertain suits against administrators and executors for the purpose of establish-

ing claims against estates, and to have a determination of the rights of persons claiming an interest therein. And this Court has had occasion to consider how far the jurisdiction in equity of the courts of the United States in such matters may be affected by the statutes of the States providing for courts of probate for the establishment of wills and the settlement of estates. We will not stop to analyze or review in detail all these cases, as they have been the subject of frequent and recent consideration in this court. The general rule to be deduced from them is that, inasmuch as the jurisdiction of the courts of the United States is derived from the Federal Constitution and statutes, that in so far as controversies between citizens of different States arise which are within the established equity jurisdiction of the Federal courts, which is like unto the High Court of Chancery in England at the time of the adoption of the Judiciary Act of 1789, the jurisdiction may be exercised, and is not subject to limitations or restraint by State legislation establishing courts of probate and giving them jurisdiction over similar matters. This court has uniformly maintained the right of Federal courts of chancery to exercise original jurisdiction (the proper diversity of citizenship existing) in favor of creditors, legatees and heirs to establish their claims and have a proper execution of the trust as to them. In various forms these principles have been asserted in the following, among other cases: *Suydam vs. Broadnax*, 14 Pet. 67; *Hyde et al. vs. Stone*, 20 How. 170, 175; *Green's Ad. vs. Creighton et al.*, 23 How. 90; *Payne vs. Hook*, 7 Wall. 425; *Lawrence vs. Nelson*, 143 U. S. 215; *Hayes vs. Pratt*, 147 U. S. 557, 570; *Byers vs. McAuley*, 149 U. S. 608; *Ingersoll vs. Coram*, 211 U. S. 335.

"The rule stated in many cases in this court affirms the jurisdiction of the Federal courts to give relief of the nature stated, notwithstanding the

statutes of the State undertake to give the State probate courts exclusive jurisdiction over all matters concerning the settlement of accounts of executors and administrators in the distribution of estates. This rule is subject to certain qualifications, which we may now notice. The courts of the United States, while they may exercise the jurisdiction, and may make decrees binding upon the parties, cannot seize and control the property which is in the possession of the State court. In *Byers vs. McAuley, supra,* the rule was thus tersely stated by Mr. Justice Brewer, delivering the opinion of the court:

"'A citizen of another State may establish a debt against the estate. (*Yonley vs. Lavender,* 21 Wall. 276; *Hess vs. Reynolds,* 113 U. S. 73.) But the debt thus established must take its place and share of the estate as administered by the Probate Court; it cannot be enforced by process directly against the property of the decedent. (*Yonley vs. Lavender, supra.*) In like maner a distributee, citizen of another State, may establish his right to a share in the estate, and enforce such adjudication against the administrator personally, or his sureties (*Payne vs. Hook,* 7 Wall. 425; or against any other parties subject to liability (*Borer vs. Chapman,* 119 U. S. 587), or in other way which does not disturb the possession of the property by the State court. (See the many cases heretofore cited.)'

"In a late case, where the subject was given consideration in this court (*Farrell vs. O'Brien,* 199 U. S. 89), while the rule of the earlier cases was stated and their binding force admitted, it was laid down that the Circuit Court of the United States could not entertain jurisdiction of a bill to set aside the probate of a will in the State of Washington, because by the statutes of that State the proceeding was one purely *in rem* and not a suit *inter partes,* sustainable in a court of equity. That case recognized what

previous cases had held, that in proceedings purely of a probate character there was no jurisdiction in the Federal courts. This was in harmony with the rule theretofore laid down in *Byers vs. McAuley, supra,* in which it was held that the Federal court could not exercise original jurisdiction to draw to itself the entire settlement of the estate of the decedent and the accounts of administration, or the power to determine all claims against the estate. But it was there decided that a Circuit Court of the United States could entertain jurisdiction in favor of citizens of other States to determine and award by decrees binding *in personam* their shares in the estates.

"In view of the cases cited, and the rules thus established, it is evident that the bill in this case goes too far in asking to have an accounting of the estate, such as can only be had in the probate court having jurisdiction of the matter; for it is the result of the cases that in so far as the probate administration of the estate is concerned in the payment of debts, and the settlement of the accounts by the executor or administrator, the jurisdiction of the probate court may not be interfered with. It is also true, as was held in the court below in the case at bar, that the prior possession of the State probate court cannot be interfered with by the decree of the Federal court. Still, we think there is an aspect of this case within the Federal jurisdiction, and for which relief may be granted to the complainant, if she makes out the allegations of her bill under the other prayers, and the prayer for general relief therein contained. Under such a prayer a court of equity will shape its decree according to the equity of the case. (*Walden vs. Bodley,* 14 Pet. 156, 164.)

"The complainant, a citizen of a different State, brings her bill against the executor and certain legatees named, who are likewise citizens of another

State, and are all citizens of Louisiana, where the bill was lled, except one, who was beyond the jurisdiction of the court, and for the reasons stated in her bill she asks to have her interest in the legacy alleged to be lapsed and the residuary portion of the estate established.

"This controversy is within the equity jurisdiction of the courts of the United States as heretofore recognized in this court, and such jurisdiction cannot be limited or in anywise curtailed by State legislation as to its own courts. The complainant, it is to be noted, does not seek to set aside the probate of the will which the bill alleges was duly established and admitted to probate in the proper court of the State.

"The United States Circuit Court, by granting this relief, need not interfere with the ordinary settlement of the estate, the payment of the debts and special legacies, and the determination of the accounts of funds in the hands of the executor, but it may, and we think has the right to determine as between the parties before the court the interest of the complainant in the alleged lapsed legacy and residuary estate, because of the facts presented in the bill. The decree to be granted cannot interfere with the possession of the estate in the hands of the executor while being administered in the probate court, but it will be binding upon the executor and may be enforced against it personally. If the Federal court finds that the complainant is entitled to the alleged lapsed legacy and the residue of the estate, while it cannot interfere with the probate court in determining the amount of the residue arising from the settlement of the estate in the court of probate, the decree can find the amount of the residue, as determined by the administration in the probate court in the hands of the executor to belong to the complainant, and to be held in trust for her, thus binding the executor personally, as was the case in *Payne vs. Hook*,

7 Wall, 425, *supra*, and *Ingersoll vs. Coram*, 211 U. S. 335, *supra*.

"It is to be presumed that the probate court will respect any adjudication which might be made in settling the rights of parties in this suit in the Federal court. It has been frequently held in this court that a judgment of a Federal court awarding property or rights, when set up in a State court, if its effect is denied, presents a claim of Federal right which may be protected in this court.

"The Circuit Court in this case construed the bill, in view of its broad prayer for relief, as one which undertook to take the entire settlement of the estate from the hands of the probate court and denied the jurisdiction of the Circuit Court of the United States in the premises. We are of opinion that, to the extent stated, the bill set up a valid ground for relief, and, while all that it asks cannot be granted, enough was stated in it to make a case within the jurisdiction of the Federal courts within the principles we have stated. * * *

* * * * * * *

"Upon the whole case we are of opinion that the Federal court has jurisdiction for the purpose of ascertaining the rights of the complainant to recover as against the executor, and the interest of the persons before the court in the fund. While the court could make no decree which would interfere with the possession of the probate court, it had jurisdiction to entertain the bill and to render a judgment binding upon the parties to the extent and in the manner which we have already stated. We are, therefore, of the opinion that the court below erred in holding that there was no jurisdiction to entertain this suit, and the decree is reversed and the cause remanded to the Circuit Court of the United States for the Eastern District of Louisiana for further proceedings in accordance with this opinion."

Since the case of *Waterman vs. Canal Bank* was decided, the practice of the District Courts of the United States has always been in accordance with that decision; that is, a resident of a different State has the right to resort to the Federal court to have his right to an interest in a distributive share or a claim against a succession or a legacy recognized, after which the finding of the Federal court is certified to the State court for execution.

In *Maling vs. Maling*, 217 Fed. 129, the Court said:

> "The Federal court may entertain jurisdiction of a suit by a distributee, he being a citizen of another State, to establish his right to the share in the estate of a deceased person, although the estate is still pending for settlement in probate, and may enforce its adjudication against the administrator personally, or his sureties, or against any other party subject to liability, or in any other way which does not disturb the possession of the property by the State court."

In *Gatzert vs. Lucy*, 218 Fed. 395, after citing the case of *Byers vs. McAuley*, 149 U. S. 608 the Court said:

> "The same case holds that the Federal court in equity cannot make any decree looking to the administration of the estate. This is, of course, true, as the property is in the possession of the probate court; but the right of the person to share in the estate may be established, and such decree when made will be recognized by the probate court."

In *Order of St. Benedict of New Jersey vs. Stainhauser*, 179 Fed. 137, the Court said:

> "While a Federal Court cannot interfere with property in the hands of an administrator, which is in the custody of the State probate court, it may adjudge the rights of the parties in such property, and such adjudication will be binding on the administrator and may be enforced against him personally."

In the cases of *Higgins vs. Eaton*, 188 Fed. 938, and *Camp et al. vs. Field*, 189 Fed. 286, the right to have interest in property under administration in a probate court of a State adjudged was recognized.

In *Northrup vs. Brown*, 204 Fed. 224, the Court said:

> "Thus it clearly appears that the Federal Court may in the first instance adjudicate a claim against the estate of a deceased person in an action brought by the creditors against the administrator or executor, the requisite amount and diversity of citizenship existing. The Federal Court may also in a proper case determine the right of a party as heir, legatee, or distributee."

To the same effect is the case of *J. Elwood Lee Co. vs. Grace Hospital*, 206 Fed. 994.

Before closing this brief, we desire to address ourselves very briefly to the contention of expediency made very effectively by opposing counsel in the United States District Court. Before that court, he pictured very graphically the horrors that would probably result from giving due faith and credit to the proceedings had in the Probate Court of Shelby County, Tennessee, pronouncing the plaintiff sane and of sound mind. He suggested that if the validity of those proceedings were recognized, it would probably become common practice

for lunatics and maniacs to go into the State of Tennessee and there have themselves pronounced sane, and then come back into the State of their former domicile and cause havoc to life and property. This argument, of necessity, ignored the manner in which the subject is safeguarded by the Legislature of Tennessee, and assumed that the laws of that State would be dishonestly administered by its courts, which cannot be conceded. A person invoking the benefit of the law of Tennessee is required to be a resident of a particular place, or to own property in that State. Before he is permitted to file his petition, he is required to have a certificate of two reputable physicians practicing within the jurisdiction of the court that he is of sound mind. Afterwards, a jury of twelve freeholders or householders is required to be summoned, and, after full investigation, to decide whether or not the applicant is of sound mind and capable of taking care of himself and his person. After that, the whole proceeding is required to be reviewed by the Judge of the County Court; it is only after his sanction has been obtained that there is a repeal of the interdiction. The danger of a maniac being pronounced sane and having his interdiction repealed in Tennessee could be possible only in the event of collusion and fraud between the maniac, two reputable physicians, the jury and the court. It is difficult to imagine what other safeguards could be thrown around the subject than have been by the Legislature of Tennessee. What could be more important than an adequate provision for the repeal of the status of interdiction? What could be more humane? To be an interdict is, to a sane person, an almost inconceivable horror. To have one's will subjected to another, to be possessed of practically no civil rights, to have no control of one's property, to have no freedom of personal movement, and to have no right to dispose, even by last will and testa-

ment, of his possessions, depicts a condition more intolerable than ordinary slavery—a condition from which a sane man revolts, more than any other. This horror is frequently evinced in the courts of justice by the unwillingness of those who have committed crimes, while laboring under delusions, to plead insanity. We don't suppose it has failed to occur in the practice of any lawyer, who has had any considerable amount of practice, that he has had many clients who have expressed a preference for being sent to the penitentiary, for crimes committed while not responsible, rather than escape punishment by resorting to the plea of insanity.

This plaintiff is perfectly sane, as shown by the record. He is a resident and citizen of the State of Tennessee. He is a voter of the State of Tennessee. He has married in that State. He is living there as a householder. There is no reason in the world why he should not have possession of his property, be allowed to go his way, a free man, untrammelled in his right to move from one place to another; to administer and dispose of his property as he may see fit; to have possession of what is his; to give and withhold as he may please, and to be, in every respect, his own man.

Wherefore, it is respectfully submitted that the judgment of the United States District Court should be annulled, avoided and reversed, and judgment now rendered herein, recognizing the plaintiff's right to an account of his mother's succession, and, in due course, to possession of his interest in the same, and a partition thereof.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 261.

FERNAND VAUGHAN GASQUET, APPELLANT,

versus

CHARLES PAYNE FENNER, TESTAMENTARY EXECUTOR, ET AL., APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF AND ARGUMENT ON BEHALF OF APPELLANT IN REPLY TO BRIEF FOR APPELLEES.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 261.

FERNAND VAUGHAN GASQUET, APPELLANT,

versus

CHARLES PAYNE FENNER, TESTAMENTARY EXECUTOR, ET AL., APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF AND ARGUMENT ON BEHALF OF APPELLANT IN REPLY TO BRIEF FOR APPELLEES.

May it please your honors:

(The writer, G. T. Fitzhugh, recently employed herein, respectfully submits this as a reply to the contentions of appellees and as a discussion of the case from different angles as they appear to him, but with full reliance on the propositions set forth in the main brief of leading counsel for appellant.)

The main question involved is whether a legatee or devisee, whose status in the State of his domicile is that of a person *sui juris*, and is shown by the proof to have this status at the time of the hearing, may be denied relief in a suit in a Federal court in equity, against an executor (the requisite diversity of citizenship existing), for the purpose of fixing the exact amount of his share in the residue of an estate, and his right to receive the same in due course of administration, and to enforce such adjudication against the executor personally or his sureties—solely on the ground that he lacked the capacity to sue in said court because about two years prior thereto there had been an inquisition and adjudication in a court of the State in which the Federal court was sitting that the appellant on account of his then mental condition was incapable of taking care of his person and administering his estate, but for whom no curator had been appointed at the time of the hearing and decree in the Federal court.

Can a Federal court in equity in Louisiana, in effect, close its doors to a citizen of Tennessee, who is suing a Louisiana citizen as an executor in a matter within the cognizance of said Federal court, and compel said Tennessee citizen to resort to a local court of Louisiana, which had previously interdicted him, for the purpose of having an adjudication of restoration to sanity, before the Federal court will recognize his capacity to institute the suit therein, notwithstanding the fact that subsequent to such interdiction by the local court his status as a person *sui juris* had been established in appropriate proceedings by a court of competent jurisdiction in the State of his domicile; and notwithstanding that the further proof offered by him in the proceeding in the Federal court showed that he was a person *sui juris* at the time of the hearing?

That the capacity of the appellant (who was without guardian either of his person or property) to sue in the Federal court in Louisiana was treated by the learned district judge as the determinative question, and that this question was considered to be absolutely foreclosed by the inquisition

and adjudication in the Louisiana State court, is shown by the following extract from the opinion of the learned district judge:

> "It is contended by the appellant that he was not insane when he removed to Tennessee and that he acquired a domicile in that State; that the Tennessee court had jurisdiction, and its judgment declaring him to be a person of sound mind is entitled to full faith and credit and is conclusive of his right to stand in judgment in this case. The defendants rely with equal confidence on the judgment of the Louisiana Court. The question presented is perplexing, to say the least, and neither the adjudged cases nor the text writers throw any appreciable light on the subject. There are cases holding that an interdict may acquire a new domicile and probably appellant had sufficient mental capacity at times to do so. If he did acquire a domicile in Tennessee, the probate court of Shelby County apparently had jurisdiction to declare him sane. But in the view I take of the case, these questions are immaterial and I do not pretend to decide them. Conceding, for the sake of argument, that the appellant had acquired a domicile in Tennessee and that the probate court of Shelby County had jurisdiction over his person and authority under the law of Tennessee to declare him sane, nevertheless, his capacity to sue in Louisiana is not completely established by the judgment rendered. The law of Louisiana recognizes that insanity may be only temporary but yet provides that interdiction having been once decreed, a person interdicted cannot resume the exercise of his rights until after a definitive judgment repealing the interdiction. Arts. 420 and 421, Civil Code. Apparently the Supreme Court of Louisiana has had no occasion to construe these articles, which is not surprising in view of their plain terms. The situation therefore is this: The appellant is *judiciously sui juris* in Tennessee and not *sui juris* in Louisiana. One judgment has as much force and effect as the other, for no matter what faith and credit the Tennessee judgment is entitled to as declaring appellant of sound mind, it could not have the extra territorial effect of annulling the Louisiana judgment or inter-

diction, and a proceeding will be necessary in the court that pronounced the interdiction to set it aside. Again conceding, for the sake of argument, but without so deciding, that the Tennessee judgment is conclusive proof of appellant's sanity, it is apparent that the Supreme Court of Louisiana affirmed the judgment of interdiction on the theory that plaintiff was incapable of taking care of himself and his estate because of his excessive use of drugs and alcohol. With regard to this aspect of his case, he might be considered sane and yet, under the law of Louisiana, subject to interdiction.

* * * * * * *

"The executor, the defendant herein, is an officer of the Louisiana probate court and that court is the proper tribunal to require him to file an account of his administration. The administration is not ended and there is some doubt as to the jurisdiction of this court to entertain this suit at this time. Waterman *vs.* Canal Bank, 215 U. S., 45. But be that as it may, it is well settled that in matters of this kind, Federal courts administer the laws of the States and are bound by the same rules that govern the State tribunals. Security Trust Company *vs.* National Bank, 187 U. S., 211.

"Appellant would have no standing in the State courts, though his sanity be conceded, either to require an accounting or to demand a partition, until the judgment of interdiction had been set aside in the proper proceeding by the court which rendered it. The bill will be dismissed without prejudice" (Rec., pp. 68-70).

It will thus be noted that the opinion in effect concedes that the appellant could and did acquire a domicile in the State of Tennessee subsequent to the judgment pronouncing his interdiction in the civil district court of the Parish of Orleans. Indeed, the question of the jurisdiction of the court for want of diversity of citizenship was directly raised by the pleadings and the proof, appellant alleging that he was a resident citizen of Shelby County, Tennessee, and *sui juris,*

and the defendants in their answer not only denying this allegation of the bill, but averring in positive terms that both the appellant and the defendants were resident citizens of the State of Louisiana, domiciled in the city of New Orleans, and that therefore the court was without jurisdiction (Rec., pp. 1-6).

The case was called for hearing on December 6, 1915 (Rec., p. 7), and was continued for thirty days to allow counsel to produce proof on the question of the jurisdiction of the court (Rec., p. 7). It was conceded that all of the defendants were citizens of Louisiana, residing in the city of New Orleans, which is within the fifth judicial district, and the question of jurisdiction raised by the pleadings therefore depended entirely on whether the appellant had acquired a legal domicile in the State of Tennessee. To sustain his contention in this behalf, appellant introduced his own deposition, in which he testified that on July 7, 1914, when no one other than himself had any control over his person, he left the city of new Orleans and State of Louisiana, with the fixed purpose and intention of absolutely abandoning his residence and citizenship in said State and never returning thereto, and with the further fixed purpose to become a resident and citizen of the city of Memphis, in the State of Tennessee, and to make his permanent home in said city and State, and that with such purpose he did actually take up his residence in said State. That he had since going to Memphis on July 28, 1914 (instead of 1915 as inadvertently stated in appellees' brief, page 6), established his exclusive habitation and home in that place, and that he had always and at all times since he came to Memphis for this purpose still intended to make the city of Memphis, Tennessee, his permanent home and to remain a resident citizen of said State; that he had registered according to law and become an elector of the State of Tennessee; that he paid his poll tax in said State, copy of his registration certificates and poll-tax receipts being exhibited with his deposition; that he had executed a written lease contract for a term, with the privilege of renewal, of an apartment in

said city (Rec., p. 44), in which he lived as the head of a house, having married after moving to Memphis. He further testified that after taking up his residence in Memphis he placed himself in a sanitarium for the purpose of taking a course of treatment for the elimination of morphine; that he voluntarily remained in said institution for many months; that the treatment was successful, an absolute cure being effected, and that for a period after he was cured he remained there for the purpose of having his diet regulated (Rec., pp. 29-30). He was vigorously cross-examined at length by able attorneys for the defendants, and the deposition alone furnishes strong and convincing proof that the appellant had sufficient mentality not only to choose a domicile but to exercise judgment and self-control and take reasonable precautions for the protection both of his person and property (Rec., pp. 25-30, 34).

The appellant further introduced the pleadings, proceedings, verdict, and judgment in the probate court of Shelby County, Tennessee, declaring him to be domiciled in that county and State, and adjudging him to be a person of sound mind, and capable and competent to control himself and his property, duly authenticated according to the act of Congress (Rec., pp. 15-22), and also duly certified copies of the statute laws of Tennessee relating to the probate court, its jurisdiction and powers (Rec., pp. 10-14); also a transcript of the record of the *Habeas corpus* proceedings and judgment in the court of appeals of the Parish of Orleans, and accompanying same the affidavit of a reputable physician of New Orleans that the appellant was entirely sane (Rec., pp. 36-42).

In the petition filed by the appellant in the probate court of Shelby County, Tennessee, on February 20, 1915 (not "the 6th day of December, 1915," as inadvertently stated in appellees' brief, p. 6), which was sworn to by the appellant, he averred that he had come to Memphis in July, 1914, for the purpose of making said city his home, and that he was "a permanent resident and citizen of the city of Mem-

phis, county of Shelby, and State of Tennessee" (Rec., pp. 16-17).

The court will take judicial notice of the laws of Tennessee, which provide that registration and the payment of a poll tax were prerequisites to voting in Shelby County, Tennessee, at the time that appellant registered and paid his poll-tax for the purpose of becoming an elector in said State, and that when the applicant for registration is not personally known to the registrars to be a legal voter in the district or ward in which he applies, he shall before being registered answer and state his age and place of residence, and that said statement shall be sworn to, and false swearing in such matter shall constitute perjury (Thompson's Shannon's Code, secs. 1198, 1199, 1202, 1220).

The fixed purpose of the appellant to abandon his domicile in Louisiana and acquire a new domicile in and become a citizen of the State of Tennessee is shown, not only by his conduct in giving up his residence in New Orleans and actually moving to and taking up a residence in the city of Memphis, Tennessee, by his acts and conduct in leasing apartments for a term, qualifying himself as an elector, the payment of poll-taxes, assuming the burdens and claiming the benefits of citizenship in said State, but by his several declarations under oath that he was a permanent resident and citizen of said State, and by his positive and unequivocal testimony in this cause that he had acquired a domicile in Tennessee, with the settled purpose not to change the same.

To overcome all this proof, defendants contented themselves with introducing merely the record of the parish court of Orleans, certified copies of the original petition and affidavit filed November 3, 1913, supplemental and amended petition filed December 23, 1913, and other pleadings, and the judgment rendered on the 15th day of June, 1914, in the civil district court of the parish of Orleans, "in the matter of the interdiction of Fernand V. Gasquet" (Rec., pp. 46–62).

The court, after hearing the evidence thus offered on behalf of appellant and defendants on the issue of jurisdiction, reserved his decision and proceeded to hear the case on its merits (Rec., p. 35). And the opinion and decree both show that the case was not dismissed for want of jurisdiction of the persons, but on other grounds, for the decree expressly recites that the bill is dismissed "without prejudice to appellant's rights to apply to the civil district court of the parish of Orleans to set aside the judgment of interdiction, and thereafter to renew his application in this court" (Rec., p. 70).

This conclusively shows that the district judge had determined that the court had jurisdiction, which could not be the case unless the appellant had acquired a legal domicile in the State of Tennessee.

Having thus recognized that the appellant's domicile in Tennessee made him a citizen of that State within the meaning of the Judicial Code (Gilbert *vs.* David, 235 U. S., 561, 569), and that the court therefore had jurisdiction on the ground of diverse citizenship, the learned district judge further conceded that the appellant suing as a citizen of the State of Tennessee was a person *sui juris* in the State of his domicile (Rec., p. 69). With such premises, the conclusion reached by the learned trial judge that the appellant did not have the capacity to sue in the Federal court in Louisiana in such a proceeding as this was, we respectfully submit, a complete *non sequitur*.

The fundamental error in the reasoning and holding of the court below consisted in failing to recognize that the *lex domicilii* governs status or personal capacity. This doctrine is imbedded in the judicial decisions of the highest courts, both of Louisiana and Tennessee, that status or personal capacity which depends on mental condition, other than idiocy, or permanent lunacy, is by both of said States, and indeed almost universally, treated as a temporary changing status, and that therefore where a person has had

two domiciles, one of origin and one by choice, and in the former there had once been an adjudication of incapacity to manage himself and his affairs, while in the latter there was a subsequent adjudication, fixing his status as that of a person *sui juris*, the proper applicatory law in a case involving simply his capacity to sue would be the law of his domicile, which last operated on his status. This error and the failure of the district judge to recognize the distinction between a case in which a judgment of interdiction is being attacked (relief sought being dependent on the success of said attack), and a case like the present one, in which the validity of said judgment is fully recognized and its full legal effect accorded it, namely, that *at the time* of the institution of the inquisition proceeding and the rendition of the judgment the party interdicted was in the mental condition declared in said judgment. To this extent it was entitled to full faith and credit. Beyond this, it could have no effect whatsoever in such a proceeding as this. But the learned district judge, after stating that the subsequent judgment of the probate court of Shelby County, Tennessee, where the appellant had his legal domicile, fixing his status as that of a person *sui juris* in that State, had as much but not more force than the former adjudication in Louisiana, expressly declaring that "one judgment has as much force and effect as the other" (Rec., p. 69), nevertheless, proceeded by practical application to hold that the judgment in Louisiana, which *first* operated on a transitory status, and not the *last* one, in Tennessee, was absolutely controlling, and precluded the right of the appellant to sue in the Federal court of Louisiana, unless and until he should leave the State of his domicile, go into the local court in Louisiana, and secure an annulment of the adjudication whose validity he did not question. Moreover, after declaring that "one judgment has as much force and effect as the other," he declined to give to the Tennessee judgment the only force or effect which it could legally possess, and for which it

was offered and relied on in this proceeding, namely, as the judgment of a court of competent jurisdiction of the State of the appellant's domicile, which last operated on his status, and established as of the date of said judgment his status as a person *sui juris;* basing this action on the mistaken idea that it could not be given such force and effect without according to it the "extra-territorial effect of annulling the Louisiana judgment."

What the court should have held was that there was absolutely no conflict between the Louisiana judgment rendered June 15, 1914, under a petition filed November 3, 1913, and the Tennessee judgment rendered February 20, 1915. Each operated at a different time on a status which is admittedly subject to change. It is not the contention of appellant, as stated in appellees' brief, page 8, that by the Tennessee judgment "the Louisiana judgment of interdiction has been set aside," for in the fifth assignment of error filed in the lower court appellant in clear and unequivocal terms relies on the error of the court in finding a conflict between said judgments, and the failure of the court to find that appellant no longer possessed the status which was given him by the Louisiana judgment, but possessed that status which was accorded him in Tennessee, and that on the entire record here the court should find that he did have the capacity to sue and maintain this suit in the Federal court (Rec., 76–77).

It seemed to be the view of the court below that both judgments were entitled to full faith and credit, but that appellant's status must remain as it was as of the date of the judgment in Louisiana, because it had not been formally set aside by the court which rendered it, and that therefore the subsequent adjudication by the State of appellant's domicile, fixing his status as that of a person *sui juris*, while entitled to full faith and credit, must be given no weight or consideration whatsoever in determining the question of the capacity of the appellant to sue in the Federal court;

whereas, the true rule is that if both of said judgments were regarded as conclusive, either under the full faith and credit clause of the Constitution, or under principles of comity, recognized in both States, they would be conclusive only of the proposition that at the time of each judgment the party was of the state of mind declared in said judgment, and under such a holding the last judgment, in the absence of proof of change, would control as to the personal capacity of the appellant to maintain this suit, because it was an application of the law of his domicile as to his status next preceding the present inquiry. And this would also be true if the said judgments were to be regarded not as conclusive, but merely as presumptive evidence to be considered with all the other evidence offered in the present hearing to determine the question of appellant's competency and capacity to sue. However, if each judgment were to be considered merely as *prima facie* evidence of the status fixed by it as it existed at the time of the decree, then it would seem that the Louisiana judgment would hardly be competent at all—or if so, of no weight—in view of the subsequent adjudication of sanity and personal capacity in the State of the appellant's domicile, which would rebut any presumption of a continuance of the condition as it existed at the time of the Louisiana judgment.

But the court below in effect held that the judgment of the court of appellant's domicile which *last* operated on and fixed his status as a person *sui juris* was entitled to no weight, even as evidence, to say nothing of being conclusive either by virtue of the full faith and credit clause, or principles of private international law, as to appellant's capacity to sue in the Federal court. The holding of the court below that the personal capacity of the appellant so fixed by the *lex domicilli*, which was shown by said judgment and other uncontradicted competent proof in the case, could not be recognized, and his right as a citizen of Tennessee admittedly *sui juris* there to sue in the Federal

court would be denied, solely because he had not gone into the court of Louisiana, of which he was no longer a citizen, and asked it to declare his status to be that which the courts of his domicile had already decreed, is entirely at war with the doctrine adopted and followed by the courts both of Louisiana and Tennessee, and declared by Boullenois incontestable, namely, that the law of the domicile decides the state and condition of the person; and the further rule announced by Pothier that "the change of domicile delivers persons from the empire of the laws they have quitted, and subjects them to those of the new domicile they have acquired."

Story's Confl. of Laws, secs. 64, 65, 66, 69, 71.

Moreover, irrespective of whether the Tennessee judgment fixing the status of appellant is entitled to full faith and credit under the Constitution, the court should have given it effect under well-settled principles of comity, as fixing the appellant's status at the time of such judgment as a person *sui juris*, and which was shown by the deposition of the appellant to have continued at the time of the hearing, and no contradictory proof offered.

Notwithstanding this, in a proceeding which, unlike the Chaloner case, involved no attack directly or indirectly on the validity of the judgment of interdiction, but in its last analysis involved solely a question of the capacity of the appellant to sue in the Federal court in Louisiana relative to a subject-matter clearly within its jurisdiction, the court wholly disregarded the status and capacity of the appellant as established and recognized by the State of his domicile, and held that his capacity to sue in that court would not be recognized until he had first gotten the local court in Louisiana to recognize such a capacity to sue. Such a theory, we submit, would certainly conflict with the idea which prevails to a more or less general extent as to the rights of citizens of different States to resort to and invoke the jurisdic-

tion of Federal courts in matters within their jurisdiction (the requisite diversity of citizenship appearing), State statutes to the contrary notwithstanding.

> "One great object in the establishment of the courts of the United States and regulating their jurisdiction was to have a tribunal in each State, presumed to be free from local influence, and to which all who were non-residents or agents might resort for legal redress."
>
> Gordon *vs.* Longest, 16 Peters (U. S.), 97, 104.

In instituting this suit in the Federal court, instead of a State court, appellant was exercising a clear legal right, and the question of his capacity to sue should have been determined in his favor on principles well-nigh universally recognized, and certainly sanctioned by the judicial decisions of both Louisiana and Tennessee. So far as disability to sue is concerned, there is absolutely no difference in the applicatory law between disability growing out of minority and one growing out of an adjudication of mental condition otherwise than of a permanent nature. The disability in either case is temporary and changeable, either being removed by time or a change of domicile of the party under disability, and when a change of such status is brought about either by time or by change of domicile under the operation of the laws of another sovereign State, in the exercise of its power to determine the status of all its citizens, such change is recognized in other States, though under the law or decisions of the State of the forum such disability still exists. But, under the holding of the court below, a person who was a minor, whose disability of minority had been removed by appropriate proceedings in the State of Louisiana, would not have the capacity to sue in his own right in Tennessee, if he had not in fact reached the age of twenty-one, especially if such person had formerly lived in Tennessee, was under guardianship there, and after the death of a parent had been

adopted by another and removed with such adopted parent to Louisiana and acquired a domicile there, and especially if the suit was brought against the appellant's own guardian for an accounting and settlement, while the appellant was still under twenty-one years of age. Yet such a case is a part of the judicial history of Louisiana and Tennessee. From the learned and elaborate opinion of Mr. Justice Folkes, in which all the judges of the Supreme Court of Tennessee concurred, in Woodward *vs.* Woodward, 87 Tenn., 644, we quote as follows:

> "This is a petition by Rosa P. Woodward, filed in the probate court of Shelby County, against her guardian Emmet Woodward, in which she seeks to have a settlement of his guardian accounts, and to have the balance in his hands found due paid over to her.
>
> "She alleges her domicile and residence in the State of Louisiana, and sets up and exhibits with her petition certified copies of the proceedings had in that State, whereby she has been emancipated from the disabilities of infancy, under and in pursuance of the statute of the State authorizing, in certain cases, the emancipation of persons who have attained the age of eighteen. The petition alleges that, in consequence of such decree, she is, under the laws of the State of Louisiana, of full age, and as such entitled to demand and receive her estate."

It is then recited that on the death of her natural parents defendant was appointed guardian of appellant and her property; that she was subsequently adopted by one C. Dickman, under and in pursuance of the laws of Tennessee, and that thereafter with the consent of her regular guardian she removed with her adopted parent to Louisiana, where they took up their permanent abode; that it was her desire to have and receive the estate coming to her from her father, by reason of the fact that she was deriving only a revenue of six per cent, and was charged with commissions and ex-

penses, whereas she could obtain an eight per cent investment of her funds in the State of Louisiana. She insisted that the State of Tennessee would recognize her majority as determined and fixed by a judicial decree in the State of her domicile, and would recognize as valid any receipt, discharge or acquittance that she might execute to her guardian for her estate in his hands. Practically the same defenses were made to this proceeding as are made in the instant case, in which the executor testified that the only reason why he did not account to the appellant was that he did not consider the appellant was a person *sui juris* and capable of validly receipting the executor.

As showing the similarity of the defenses in the two cases, we quote further from the opinion in the Woodward case:

> "To this petition the defendant interposed a demurrer, upon the ground that petitioner was still a minor under twenty-one years of age; that the proceedings had in the courts of Louisiana would have no *extra-territorial* effect by reason of the want of jurisdiction in said courts *over the estate of the ward situated in Tennessee;* that the proceedings had in Louisiana are unknown to the laws of Tennessee, and opposed to the policy of Tennessee law, and contrary to the interest of the citizens of Tennessee, and would, therefore, not be recognized in the courts of this State; that the said guardian is lawfully in possession of said funds under the laws of this State, and has been guilty of no breach of duty in relation thereto; and that said petitioner, being a minor, *cannot maintain this action in her own name.* (Italics ours.)
>
> "The probate judge sustained the demurrer, and dismissed the petition. Petitioner has filed the record for a writ of error in this court.
>
> "There are certain general principles which control the disposition of this case. They are, in the main, well settled; the difficulty lies in their application to the particular facts of the case in hand.
>
> " 'It is elementary that every State has an inherent right to determine the status or domestic or social

condition of persons domiciled within its territory, except in so far as the powers in this respect are restrained by duties or obligations imposed upon them by the Constitution of the United States' (Strader *vs.* Graham, 10 How., 93).

* * * * * * *

"In such cases we regard it as well settled that under unquestionable principles of *private international* law one State will recognize and give force and effect in its own tribunals to the legislation of another State, in so far as it fixes the status and capacity of married women and minors. This is frequently spoken of as a principle of comity; and while it doubtless has its origin in considerations of comity, it has been so repeatedly and emphatically recognized by the courts of all civilized countries that it is now thoroughly crystallized into rules and principles of private international law.

* * * * * * *

"This court has recognized the doctrine contended for by petitioner in the case of Robinson *vs.* Queen, decided at Nashville and reported on page 445 of this volume, where it is held that the judicial proceedings, under the laws of the State of Kentucky, emancipating married women from the disability of coverture, would be recognized and enforced in this State to the extent of allowing an action to be brought and maintained in the courts of this State against such married woman, on a note made by her in the State of Kentucky as surety for her husband, clearly recognizing that her status as a person *sui juris* fixed by judicial proceedings in the State of her domicile, would have full force and effect in this State.

"To the same effect is the text in Whatron's Conflict of Laws, section 114, where the learned author says:

"'A foreigner who is capable of business at his domicile must be recognized as so capable by our laws, even though if domiciled among us he would be incapable.'

"A near analogy to the present case, with reference to the recognition in one State of the status fixed by the law of the domicile, is to be found in the case of children born out of wedlock, but made legiti-

mate afterward according to the laws of their domicile, by the subsequent marriage of their parents. They are deemed everywhere legitimate for the purposes of inheritance, etc. Andrews *vs.* Andrews, L. R., 23; Chan. Div., 737; Miller, 91 N. Y., 315; *Scott vs. Key*, 11 *Louisiana Ann.*, 232. This doctrine is generally subject to exception concerning real estate, which is governed by the *lex rei sitæ.*"

The court then reviewed American and foreign authorities and said:

"So far we have traveled a broad and well-defined road, from which there is no variableness nor shadow of turning, every step of which is marked by well-considered authority of the highest repute."

The court further held that the effect of the petitioner's removal with her adopted parent to Louisiana was to change her domicile, and—

"With the question of change of domicile settled, we, upon authority and principle, hold that she has the right to receive from her guardian in the State of Tennessee funds coming to her in consequence of her majority by the law of her domicile. In this connection it may be remembered that *a capacity to take and to have* differs from a capacity to do and contract. In short, 'a capacity to hold, from a capacity to act,' as was said by Mr. Chief Justice Gray in the case of Ross *vs.* Ross, *supra*. We do not understand that, with the matter of removal and adoption out of the way, there is any serious question that a person of full age in Louisiana could receive and receipt for property belonging to such minor in this State. The receipt in such case, accompanied with a discharge, is a contract. There are any number of cases holding that a person who is of full age by the law of their domicile will be held bound by any contracts made by them in another State, where they would not otherwise be of age under the laws of such other State."

The court overruled the contention of the defendant that the statute in Tennessee providing that every minor *upon attaining the age of twenty-one years,* upon receipt of money or estate, shall receipt the guardian for the same, prevented the application of the principle of comity so as to permit the appellant to demand an accounting from her guardian, prior to the time that she reached the age of twenty-one, holding that the words "twenty-one" in said statute should be construed to mean "full age." We quote further:

> "Under the view we take of the law governing this case, the petitioner has attained her majority under the laws of the State of her domicile, and this court recognizing the status of capacity as thus fixed by the law of her domicile, will declare her of full age, so far as her right to demand and receive from any one having property in their possession belonging to her, to which she would be entitled upon attaining full age in this State.
>
> "In other words, being of full age in Louisiana, the State of her domicile, she is of full age in this State under the principles of private international law obtaining in such cases.
>
> "Let the judgment be reversed, and the case remanded for further proceedings" (87 Tenn., 644).

This case is a direct and convincing answer to the contention of the defendants which prevailed with the court below. The doctrine of this case was followed and reannounced in Memphis Trust Company *vs.* Blessing, 103 Tenn. 237, which held that

> "A minor, domiciled in another State, by whose laws he is emancipated from all disabilities of infancy, is entitled to receive and recover, in the same manner as an adult, his real estate, as well as his personal funds, having a situs and being in the hands, control, and possession of a guardian appointed and resident in this State. The *lex domicilii* controls as to ward's capacity."

In that case, as in the Woodward case, the guardian invoked the statute compiled in Shannon's Code, in section 4318, and insisted that under the express provisions thereof the guardianship must continue until the minor arrived at the age of twenty-one years, and that until that time the minor did not have the capacity to sue or validly receipt to the guardian, but the court again held that this statute applied only to wards domiciled in the State of Tennessee, and that where the disabilities of the ward domiciled in another State had been removed, this status was bound to be recognized under the *jus gentium*, and that the ward so emancipated by the law of her domicile would not have to come into Tennessee and secure a removal of her disability there before her capacity to sue and demand a settlement of her guardian in Tennessee would be recognized, notwithstanding that under the statute referred to said ward if domiciled in Tennessee would not have such capacity to sue her guardian for a settlement and validly receipt to him. This case is clearly analogous to the instant case, and is strong, persuasive authority for the proposition that the statute of Louisiana, providing that a judgment of interdiction "Can only be revoked with the same solemnities which were observed in pronouncing it," was intended to apply only to persons who remain domiciled in said State, and could not be considered as declaring any policy that would prevent the recognition in Louisiana of a status or personal capacity following a change of domicile and the operation of the laws of said domicile. Such a construction in effect would come in direct conflict with the principle that has become a part of the jurisprudence of Louisiana, that every sovereignty has the exclusive right to determine the status or condition of persons within its jurisdiction, that the *lex domicilii* governs. It should be noted that in the Woodward case, in which a citizen of Louisiana successfully invoked this principle in the courts of Tennessee, the case of Scott *vs.* Key, 11 La. Ann., 232, 237, was cited, and this case expressly approves

the maxim of Boullenois cited by Story, section 51, and quoted in the Woodward case.

> "'*Habilis vel inhabilis in loco domicilii est habilis vel inhabilis in omni loco,*' must therefore be deemed law in Louisiana."
> (Scott *vs.* Key, 11 La. Ann., 232, 237).

In this case it was held that the status of legitimacy created by a special act of the legislature of Arkansas accompanied a child into Louisiana and would be given full recognition there, entitling him to inherit as a legitimate son. In applying the law of the domicile as to marital status, Louisiana has certainly gone as far as any other State in the Union. In the Succession of Benton, 106 La., 494; 59 L. R. A., 135, it was held that where the conduct of the husband justifies the wife in leaving him, and furnishes grounds for a divorce, she is authorized to acquire a separate domicile, and the law of her domicile so acquired will determine her marital status. Further, that a judgment of divorce in the State in which she has acquired her domicile, and valid there, will be valid in Louisiana without regard to the place of marriage, the offense or domicile of the husband, and that, too, notwithstanding the divorce is granted on grounds antedating the marriage, which would not be done in Louisiana.

Another very strong case showing that the fixed judicial policy of Louisiana is to recognize the law of domicile as to status or personal capacity, is Succession of Caldwell, 114 La. Ann., 195, which was a case of adoption by a citizen of Louisiana of a niece as his child, living in Massachusetts. The petition was filed in the probate court of Massachusetts, by counsel for the Louisiana citizen, who did not otherwise appear, asking for such adoption. She appeared, and a decree of adoption was entered. The proceedings were very informal. Subsequently on the death of the adopted father she applied for and was granted letters of administration. A petition was thereupon filed by nieces and nephews of the

deceased, for the purpose of setting aside her appointment as administratrix, claiming that the adoption proceedings were invalid, and that the decree of the probate court of Massachusetts in said proceeding, even if valid, had no force or effect in Louisiana. The Supreme Court of Louisiana held that the status thus created must be recognized, and that the decree of the said probate court of Massachusetts must be given the same force and effect to which it was entitled in Massachusetts. We quote:

> "The court had jurisdiction of Mrs. Samuels by reason of her domicil and acquired jurisdiction over the adoptive father by his voluntary appearance. See Shield *vs.* Thema, 28 Hon., 259. A judgment of a State court has the same credit, validity and effect in every other court within the United States which it has in the State where pronounced. Hampton *vs.* McConnell, 3 Wheat., 234. Hence we should give effect to the decree of adoption unless it is 'clearly repugnant to our laws.' "

The court then proceeded to show that the laws of Louisiana on the subject of adoption were similar to those of Massachusetts, and that on mere principles of comity the decree of the probate court of Massachusetts should be given full effect.

Principles controlling the recognition by one State of the status, capacity or incapacity of persons domiciled in another State, whether relating to majority and minority, legitimacy and illegitimacy, or sanity and insanity, are practically the same. Story in his Conflict of Laws, section 99, page 169, says:

> "In discussing this subject our attention has been more particularly drawn to the common cases of incapacity resulting from minority and marriage and legitimacy. The principles which apply to them are not materially different from those which apply to cases of idiocy, insanity and prodigality."

> "Boullenois enumerates as personal laws, all laws

which regard majority or minority, emancipation, interdiction, lunacy or profligacy, subjection of married women to martial power, subjection of minors to the power of their parents, and guardians, legitimacy or illegitimacy," etc.

Story's Confl. of Laws, 67.

Pothier and Le Brun concur substantially; and the Supreme Court of Louisiana has shown that the rule applicable to the status arising from majority or minority, legitimacy and illegitimacy, also applies to status arising from mental condition,—for in Hansel *vs.* Hansel, 44 Ann., 548, it was held that a notoriously insane person, who for three years had been confined in the insane asylum in the city of Philadelphia, his domicile being in that city, could not have a special curator appointed for him in a suit for partition brought against him in Louisiana, declaring that "the courts of this State must treat him as a sane person until the courts of his domicile have decreed otherwise by interdicting him." Further: "The courts of his domicile alone have jurisdiction to ascertain his mental condition and to render the necessary decree relieving from the control both of his person and estate."

It thus appears that as to the very phase of personal capacity involved in this controversy, Louisiana recognizes the rule which is almost universal that the law of the domicile governs the status of a person.

Lamar *vs.* Micou, 112 U. S., 452, 470.

Minor's Conflict of Laws, pp. 131, 133.

"The proper law governing the capacity or incapacity of a person is the law of the person's legal situs or domicile, *lex domicilii.*"

Minor's Conflict of Laws, p. 134.

Lunsford *vs.* Coquillon, 2 Martin (N. S.), 401.

Blackmore *vs.* Negro Phil, 7 Yerger (Tenn.), 450.

Wharton's Conflict of Laws, sec. 114.

Dicey Conflict of Laws (2 ed.), 462, 464.

Dicey maintains that the modern tendency is to adopt the view that a person's civil status ought to be governed universally by one single principle, namely, that of domicile, which is the criterion established by law for the purpose of determining civil status.

Dicey, p. 464.

And in Finley *vs.* Brown, 122 Tenn., 316, 339, a case involving the question of status of a child by adoption in another State, the Supreme Court of Tennessee again recognized what it termed "the almost universal rule of comity which gives credit to personal status acquired under foreign laws."

Plaintiff's Capacity and Right to Sue in the Federal Court Sanctioned Both by Comity and the Constitution.

Private international law required the recognition by the court below of the status of the appellant as a person *sui juris*, established by the judgment of a court of competent jurisdiction under the laws of his domicile.

The comity extended is the comity of the State, and not of the court. It is the general comity of the sovereignty as declared by legislation and by judicial precedents establishing a uniform rule.

1 Wharton on Conflict of Laws, sec. 180.

Augusta Bank *vs.* Earle, 13 Peters (U. S.), 519.

Vague surmises and flippant assertions as to what is the policy of the State, or what would be shocking to the moral sense of its people, are not to be indulged in. The law points out the sources of information to which courts must appeal to determine its public policy—the constitution, laws, and judicial decisions.

12 C. J., 439.

Swan *vs.* Swan, 21 Fed., 299, 301.

This is applicable to the somewhat perfervid expressions of our learned adversaries (Appellees' brief, pp. 21-22), as to the consequences of the recognition in a case of this character of the status or personal capacity acquired by the *lex domicilii,* though Louisiana is committed to this doctrine in its judicial decisions. The learned counsel for the defendants indulge in terrifying forebodings and ask this court to consider that if the State of Tennessee is permitted to exercise its prerogative right to determine the status of a person domiciled therein, and such status is to be recognized in other jurisdictions, then a person who was adjudged of unsound mind in Louisiana might go into Tennessee and acquire a domicile there and submit the question of his sanity to the courts of that State, be adjudged sane because the courts knew nothing about him or "his peculiar hallucination," and then return to Louisiana, and armed with the judgment of the court of his domicile resist incarceration and possibly commit deeds of violence. But even if the courts of Tennessee, charged with the duty of holding inquisitions for the purpose of determining the personal status of its citizens, were lacking in capacity to discharge this important function, it is hardly conceivable that they would be so indifferent to the interests of their own citizens as to declare insane persons sane, or be careless in this regard, even if they knew that such persons were shortly going to make a visit to another State. They might do some damage in Tennessee before leaving. But in the instant case, even if the reputable and competent physicians required by law to make a thorough examination of the party whose mental condition was under investigation, and make a written report to the court, had been unable to learn anything of the history of the case, or discover a phase of insanity which nevertheless actually existed, and if the jury and the court were likewise capable of being deceived, nevertheless, the record shows that the particular so-called peculiar hallucination or mental condition which resulted in the interdiction of the plaintiff

in proceedings instituted in Louisiana in November, 1913, were in the proceedings in the probate court of Shelby County, Tennessee, in 1915, specifically and in detail called to the attention of that court by the pleadings themselves, so it could not have been overlooked. But it will be presumed that the courts of Tennessee acted intelligently as well as legally in the discharge of their functions.

> "It is a strong thing for another tribunal to say that the local court did not know its own business under its own laws."
>
> Michigan Trust Co. *vs.* Ferry, 228 U. S., 346, 354.

Instead of casting a general reflection on the courts of a sister State, it would have been far more appropriate and more to the point to offer some evidence that at the time of the Shelby County judgment, or even subsequent thereto, appellant was NOT of sound mind. Appellees, it is fair to presume, would have introduced such evidence if available. Lacking pertinent facts, they indulged in fantastic fears.

> "Federal courts on a question of what constitutes public policy of a State as determining whether or not comity shall be extended, follow the decisions of the highest court of that State with regard to questions arising therein."
>
> 12 C. J., 440.
>
> Parker *vs.* Moore, 115 Fed., 799 (Certiorari denied, 187 U. S., 644).

We have seen that the judicial decisions of Louisiana strongly uphold the principle that the law of domicile controls as to personal status, and we have seen that this same principle was successfully invoked by a citizen of Louisiana in the courts of Tennessee. No possible injury to the citizens of Louisiana can be shown to follow the application of this principle to the instant case. No interest of any citizen of Louisiana in any property, real or personal, will

be in the slightest degree affected. It involves no question of the devolution of title or the change of any vested interest. The heirs and distributees of the estate will receive exactly the same interest and proportion whether this doctrine of the law of domicile as to appellant's personal capacity is applied or not. But appellant will be greatly injured and deprived of the only right in property which is worth while, namely, the right to control it; and also denied the precious privilege of having his status as a person *sui juris* fully recognized. The executor will in no wise be affected, because if the personal capacity of the appellant as established by the law of his domicile is recognized, as we insist it should have been in the court below, it will necessarily mean that the appellant's receipt will be a valid acquittance to him, just as the receipt of the minor citizens of Louisiana, whose disabilities were removed, was held to be a valid receipt, acquittance, and discharge of the guardian who was sued in Tennessee, notwithstanding that under the statutes of Tennessee said Louisiana citizen was still within the age of minority, to wit, twenty-one years. Is there any possible distinction in principle between that case and the instant case, especially in so far as the capacity of the appellant in each case to sue is concerned? The well-nigh universal adoption of the law of the domicile as to personal capacity is declared by Judge Story to be based on the extreme inconvenience which would otherwise result to all nations from the perpetual fluctuation of capacity, state and condition upon every accidental or temporary change of place of a person or his movable property. And as directly in line with Woodward *vs.* Woodward, *supra*, is the following:

> "But suppose that a person has had different domiciles, a domicile by birth and a subsequent domicile by choice, when he is *sui juris*, which is to prevail as to capacity or incapacity? Hertius does not hesitate to say that the law of the new domicile is to prevail. * * *. The like opinion appears to be held both by Paul Voet and John Voet."
>
> Story's Conflict of Laws, p. 76.

Further:

> "In the next place, another rule directly connected with the former, is, that the personal capacity or incapacity attached to a party by the law of the place of his domicile, is deemed to exist in every other country, so long as his domicile remains unchanged, even in relation to transactions in a foreign country, where they might otherwise be obligatory. Thus, a minor, a married woman, a prodigal or a spendthrift, a person *non compos mentis*, or any other person who is deemed incapable of transacting business (*sui juris*) in the place of his or her domicil, will be deemed incapable everywhere, not only as to transactions in the place of his or her domicil, but as to transactions in every other place."
>
> Story's Conflict of Laws, p. 86.

And Wharton states the converse of the proposition with equal clearness:

> "A foreigner who is capable of transacting business at his domicile must be recognized as so capable by our laws, even though if domiciled among us he would be incapable."
>
> Wharton's Conflict of Laws, sec. 114, cited with approval in Woodward *vs.* Woodward, *supra.*

Minor in his Conflict of Laws, adopting the definition of the status of an individual as "the legal relation in which that individual stands to the rest of the community," shows the variety of the legal relations to which the term "status" may apply, as for instance: "One who is under age, does not occupy the same relation to the rest of the community as one who is an adult * * * one who is competent to transact business occupies a different relation from one who is not,—a legitimate or adopted child from one who is not," etc. The author set out the reasons for the rule that the proper applicatory law to determine status is the *lex domicilii.*

Minor's Conflict of Laws, secs. 68, 71.

The Judgment of the State of Domicile Fixing the Status is a Judgment in Rem, Entitled to Full Faith and Credit.

A judgment of a court of domicile as to status of a party is conclusive, because such a proceeding is strictly *in rem*, or in the nature of a proceeding *in rem*.

Where the proceeding establishing status is a direct proceeding for that purpose and not merely incidental to some other relief, the judgment is binding on the world.

> "The general rule undoubtedly is that a decree or other judicial proceeding binds those only who are parties to it, but proceedings *in rem* are deemed conclusive upon all the world, and inquisitions being made under competent public authority, to ascertain matters of public interest and concern, are said to be analogous to proceedings *in rem*, to which no one can strictly be said to be a stranger, and are accordingly clearly admissible in evidence."
>
> 14 R. C. L., p. 563.

In the case of Tilt *vs.* Kelsey, 207 U. S., 43, this court said:

> "As was said by Mr. Justice Bradley, speaking on the subject of Broderick's will, 21 Wall., 503, p. 519, 'The world must move on, and those who have an interest in persons and things must be charged with knowledge of their status and condition and of the vicissitudes to which they are subject. This is the foundation of all judicial proceedings *in rem*.'"

The conclusiveness of a judgment determining the status of individuals is sustained on the theory that the public are considered as having been brought into court, and for that reason bound by the judgment.

15 R. C. L., p. 640.

State *vs.* Caron, 73 N. H., 434; 6 Am. Cases, 486.

Hilton *vs.* Snyder, 37 Utah, 384.

Ann. Cases, 1912-C, and note, p. 241.

"A judgment *in rem* has been defined generally as an adjudication pronounced upon the status of some particular subject-matter, by a tribunal having competent authority for that purpose."

15 R. C. L., p. 629.

Silvey *vs.* Tift, 123 Ga., 84; 1 L. R. A. (N. S.) 386.

Lord *vs.* Chadbourne, 42 Me., 429; 66 Am. Dec., 290.

In the instant case there is no double or divisible *res* as was declared in the opinion of the majority of this court to exist in Haddock *vs.* Haddock, 201 U. S., 562, and on which theory alone it was held that a judgment of a State having jurisdiction of only a part of the *res* would be given effect in courts of the State having jurisdiction of the other portion of the *res* only on principles of comity, instead of under the full faith and credit clause of the Constitution, which was applied in Atherton *vs.* Atherton, 181 U. S., 155, and Maynard *vs.* Hill, 125 U. S., 190. If the State of Connecticut had been the matrimonial domicile, as well as the domicile of the husband, there can be no reasonable doubt that the judgment of the Connecticut court, then having jurisdiction of the *res* in its entirety, would have been held to be binding everywhere.

In the instant case the probate court of Shelby County, as we shall hereinafter conclusively show, had jurisdiction of the *res*, which was the relation of the appellant to other persons in the community, which relation depended upon the state or condition of his mind, and this relation involved the question of status.

"That a question of status is involved in the law of lunacy is obvious, for the condition or quality of the person is affected, and also in one of its bearings, his relation to some community."

2 Piggott, 339, 340.

Minor's Conflict of Laws, secs. 68, 69.

"In case the judgment or decree be *in rem*, it is true, the effect given to it is generally conclusive everywhere, if the *res* is within the court's jurisdiction, for the sovereignty of a State over everything within its limits is supreme, and will usually be respected in other States."

Minor's Conflict of Laws, sec. 86, p. 187.

In the case of Cockrill *vs.* Cockrill (Circuit Court of Appeals for the 8th Circuit), 92 Fed., 811, the court had occasion to deal with and to clearly define the nature of inquisitions and judgments of exactly the same nature as that now under consideration. We quote:

"The complainant further assails the validity of the judgment of the probate court of Platte county rendered on November 1, 1887, because no notice of the hearing of complainant's petition for restoration was given to complainant's family or guardian. In considering this question, it is well at the outset to note that the statutes of Missouri do not, in terms, require any notice in such cases; that the probate court of this State is a court of record, possessed of plenary jurisdiction to appoint, control, and discharge guardians of insane persons; and judgments within its jurisdictional limits are not subject to collateral attack for any mere irregularities. Bearing these facts and principles in mind, the question is: Does the above-mentioned want of notice of complainant's application for restoration to his rights so affect the jurisdiction of the court as to render its judgment thereon void? I think not, for the following reasons: The probate court had jurisdiction over the subject-matter. This subject-matter was the status of the complainant himself. The finding and judgment of the court as to such status affected him and his relation to his property only. The proceeding is, therefore, analogous to a proceeding *in rem*, where jurisdiction is acquired over the *res*. It was probably in view of considerations like these that the legislature made no provision requiring notice of the hearing of an application for restoration to be given to any persons."

In Hayward *vs.* Hayward (Appellate Court of Ind.), 115 N. E., 966, it was also recognized that in such inquisition proceedings the public, rather than the person who sets the proceedings in motion by information, "is the real party in interest."

After dealing with proceedings *in rem* involving property, Story takes up the following:

> "SEC. 594. Guardianships.—A similar doctrine has been contended for, and in many cases successfully, in favor of sentences of a peculiar character, such as those which touch the general capacity of persons, and those which concern marriage and divorce. These foreign jurists strongly contend that the decree of a foreign court declaring the state (status) of a person and placing him as an idiot, a minor, or prodigal under guardianship ought to be deemed of universal authority and obligation."

Citing Boullenois Obs., 25, p. 663, Burgundus' Opinion. Adding in the note:

> "Indeed Burgundus seems to have been of the opinion that the only judgments which ought to have any force or operation extra-territorially are those that affect the state or condition of persons."
> Story's Conflict of Laws, p. 818.

It should be borne in mind that the doctrine of Boullenois as to the law of domicile governing personal status or capacity has been approved by the Louisiana court in Scott *vs.* Key, *supra.*

From the syllabus prepared by the court in the case of Spann *vs.* Edwards (Supreme Court of Ga.), 77 S. E., 1128, we quote:

> "A judgment declaring the adoption of a child, rendered by a court of competent jurisdiction in another State, regular on its face, is conclusive of the status at the time of its rendition, and will be accorded full faith and credit, when introduced in a *habeas*

> *corpus* proceeding in this State, for the custody of the child. See Milner *vs.* Gatlin, 139 Ga., 109; 76 S. E., 860."

The decree of a probate court of Washington Territory decreeing that the property of an estate is escheat to the county for failure of heirs was within its jurisdiction, and when such a court in a proceeding *in rem* under a valid statute determines that there are no heirs to an estate, the decree binds all the world, including heirs who fail to appear.

Christianson *vs.* King County, 239 U. S., 356.

So the liability and rights and powers of a corporation with reference to the matter of assessments, or the creation of a mortuary fund, will be determined by the law of the domicile, and the status of a corporation in the sense of its relation to the various members or certificate holders, constitutes the *res* and a judgment of the court of the domicile is entitled to full faith and credit everywhere, regardless of whether a particular party in the State in which said judgment is relied on was a party to the original proceeding or had notice thereof or not, and even though the decree in the State of domicile is offered for a different purpose than the one for which the decree was rendered.

Hartford Life Ins. Co. *vs.* Ibs, 237 U. S., 662.

We quote from page 673:

> "It is said, however, that even if the decree, determining the status and use to be made of the mortuary fund, was binding upon members and beneficiaries it could not be offered in evidence in a suit on a policy of insurance, since the cause of action and the thing adjudged in the two cases was different—one involving the status of the fund and the rights of members therein, while the present case related to the right of a beneficiary to recover on a policy and the power of the company to declare a forfeiture. But

the defendant's contention that the policy had lapsed, because of the failure of Ibs to pay the assessment, and the appellant's reply that the assessment was void, because the mortuary fund was sufficient to meet Call 127, raised an issue as to the right of the insurance company to levy the assessment."

See also Supreme Council Royal Arcanum *vs.* Green, 237 U. S., 531.

Proceedings to establish status, such as marriage, divorce, pedigree, citizenship, inquisition of lunacy, are in their nature proceedings *in rem*.

Hilton *vs.* Snyder, 27 Utah, 384.

"A judgment *in rem* is founded on a proceeding instituted, not against the person, as such, but against or upon the thing or subject-matter itself whose state or condition is to be determined. It is a proceeding to determine the state or condition of the thing itself, and the judgment is a solemn declaration upon the status of the thing, and it *ipso facto* renders it what it declares it to be."

Woodrull *vs.* Taylor, 20 Vt., 65.
2 Black on Judgments, sec. 792.
7 Encyc. U. S. Supreme Court Rep., 558, citing—2 Bouvier's Law Dictionary, entitled Judgment *in Rem*.
Freeman *vs.* Alderson, 119 U. S., 185.

There can be absolutely no doubt that throughout Tennessee the judgment of the probate court of Shelby County, pronouncing the appellant sane in every respect and fully capable of taking care both of himself and his property, is accorded the fullest credit, as the undisputed evidence shows that he is exercising all the rights of citizenship in that State, free of all restraints, and is treated in all respects as a person *sui juris*. That being true, we earnestly insist that said judgment should be accorded everywhere the same faith, credit, validity and effect which it has in Tennessee.

Our adversaries claim that the judgment of the parish

court of Orleans, adjudging the appellant to be of unsound mind, must be given full faith and credit by the Federal court, but they deny that a later judgment affecting the status of the same person in the State of his domicile, should be accorded full faith and credit in the Federal court of Louisiana. We take no inconsistent positions, but respectfully insist that each judgment is to be given the same degree and extent of force and credit, and that is, that, at the time of the rendition of each judgment the status of the appellant which was being dealt with in each jurisdiction was as it was declared to be in said adjudications respectively. An inquisition of lunacy as to personal status dependent on mental condition is conclusive *eo tempore,* but only *prima facie* as to any subsequent time.

Clark's Executor *vs.* Trail Admrs., 58 Ky. (1 Metcalf), 35.

This is necessarily true because of the temporary or transitory nature of such status.

If the probate court of Shelby County, Tennessee, had jurisdiction of the *res,* which was the legal status or capacity of the appellant in his relation to the rest of the community, and of the only necessary party, namely, the one whose status was the subject of the inquisition, then such judgment could not be disregarded in a Federal court because of any alleged errors in the procedure, pleading or practice, if such existed. These were matters which were within the determination of the court having jurisdiction of the subject-matter, or of a court of errors and appeal in said State. As to such local matters, this court will presume that the local procedure followed the traditions of the place, where there was jurisdiction both of the subject-matter and of the parties.

Michigan Trust Co. *vs.* Ferry, 228 U. S., 346.
Chicago Life Ins. Co. *vs.* Cherry, 244 U. S., 25.

The judgment of the probate court of Shelby County was treated as properly before the court below, both by the defendants and the court itself, and this court will so treat it.

Supreme Council of Royal Arcanum *vs.* Green, 237 U. S., 531, 545 (Opinion Chief Justice White).
Ib. L. R. A., 1916-A, 778.

> "Where there is no want of jurisdiction of the person or subject-matter of the controversy, mere error in the exercise of jurisdiction by a foreign court rendering judgment is immaterial in an action on such judgment, and a foreign judgment founded on a mistake as to the law is nevertheless valid and entitled to full faith and credit.
>
> * * * * * * *
>
> "Similarly an adjudication *in rem* of a foreign court, acting within the jurisdiction conferred upon it by the State within whose lawful control the subject-matter adjudicated upon is found, is conclusive against all the world, even though it professes to proceed on an assumption of the law of another country, and that assumption is erroneous."
>
> 15 R. C. L., pp. 915, 916.

As bearing on this phase of the case we quote from the opinion of Mr. Justice Holmes in Fauntleroy *vs.* Lum, 210 U. S., 230, at pages 236-237:

> "The doctrine laid down by Chief Justice Marshall was 'that the judgment of a State court should have the same credit, validity, and effect in every other court in the United States, which it had in the State where it was pronounced, and that whatever pleas would be good to a suit thereon in such State, and none others, could be pleaded in any other court of the United States.' Hampton *vs.* McConnel, 3 Wheat., 234. There is no doubt that this quotation was supposed to be an accurate statement of the law as late as Christmas *vs.* Russell, 5 Wall., 290, where an attempt of Mississippi by statute, to go behind judgments recovered in other States was de-

cleared void, and it was held that such judgments could not be impeached even for fraud.

* * * * * * *

"We assume that the statement of Chief Justice Marshall is correct. It is confirmed by the act of May 26, 1890, c. 11, 1 Stat., 122 (Rev. Stat., sec. 905), providing that the said records and judicial proceedings 'shall have such faith and credit given to them in every court within the United States, as they have by law or usage in the courts of the State from whence the said records are or shall be taken.' See further Tilt *vs.* Kelsey, 207 U. S., 43, 57. Whether the award would or would not have been conclusive, and whether the ruling of the Missouri court upon that matter was right or wrong, there can be no question that the judgment was conclusive in Missouri on the validity of the cause of action. Pitts *vs.* Fugate, 41 Missouri, 405; State *vs.* Trammel, 106 Missouri, 510; *In re* Copenhaver, 118 Missouri, 377. A judgment is conclusive as to all the *media concludendi*, United States *vs.* California & Oregon Land Co., 192 U. S., 355; and it needs no authority to show that it cannot be impeached either in or out of the State by showing that it was based upon a mistake of law. Of course a want of jurisdiction over either the person or the subject-matter might be shown. Andrews *vs.* Andrews, 188 U. S., 14; Clarke *vs.* Clarke, 178 U. S., 186. But as the jurisdiction of the Missouri court is not open to dispute the judgment cannot be impeached in Mississippi even if it went upon a misapprehension of the Mississippi law. See Godard *vs.* Gray, L. R. 6 W. B., 139; MacDonald *vs.* Grand Trunk Ry. Co., 71 N. H. 448; Peet *vs.* Hatcher, 112 Alabama, 514."

This was an action on an award, based on a gambling transaction in Mississippi, which would not have been conclusive in the courts of that State, because the transaction resulting in the award was in violation of its laws as well as its public policy; nevertheless, it was held that a judgment obtained on said award in the State of Missouri must be accorded full faith and credit by the courts

of Mississippi, because of its force and validity in Missouri.

In the instant case the appellant relied on a judgment of a court of competent jurisdiction in the State of his domicile, as conclusively fixing his status as a person *sui juris* at the time of the rendition of said judgment, which would be presumed to continue until some intervening change had been shown. In so doing he was invoking a principle which, so far from being opposed to, was in harmony with, the policy of the law of Louisiana as declared by its judicial decisions, namely, that personal capacity is governed by the law of the domicile, and as shown in the case of Hansel *vs.* Hansel, *supra*, it applied this principle to the particular status under consideration by recognizing a citizen of another State as *sui juris*, notwithstanding he was shown to be a "notoriously insane person," the court declaring that "the courts of this State must treat him as a sane person until the courts of his domicile have decreed otherwise by interdicting him."

And in respect to a status or personal capacity growing out of adoption, and considering the effect of a judgment of adoption in the probate court of Massachusetts, which was relied on by the adopted child in administrative proceedings in Louisiana, the court in the later case of The Succession of Caldwell expressly declared that "a judgment of a State court has the same credit, validity and effect in every other court of the United States which it has in the State where rendered," citing in support of this unequivocal enunciation of the rule now contended for by appellant, the case of Hampton *vs.* McConnell, 3 Wheat., 234, and this judgment fixing the status by the law of the domicile was given full recognition in Louisiana, both under the full faith and credit clause and under principles of private international law.

As we view the situation, any other holding would be a denial of the exclusive power and authority of the sovereignty to determine the status of persons and things within its jurisdiction.

With slight changes in verbiage, the following forceful statement of Chief Justice White in Overby *vs.* Overby, 178 U. S., 191, 192, would be applicable to the instant case:

> "The proposition of appellees when truly comprehended, amounts but to the contention that the laws of the respective States controlling the transmission of real property by will or in case of intestacy, are operative only so long as there does not exist in a foreign jurisdiction a judgment or decree which in legal effect has changed the law of the situs of the real estate. This is but to contend that what cannot be done directly can be accomplished by indirection, and that the fundamental principle which gives to a sovereignty an exclusive jurisdiction over the land within its borders is in legal effect dependent upon the non-existence of a decree of a court of another sovereignty determining the status of such land. Manifestly, however, an authority cannot be said to be exclusive, or even to exist at all, where its exercise may be thus frustrated at any time."

The personal status established by a judgment under the law of the situs of the person, which judgment is entirely valid and binding in the State where it is rendered, should not depend for recognition to the same extent in other States upon the comity of those States, because to that extent the power of the sovereignty to fix the status of its subjects would be impaired. The power of a State to change the status of its own citizens without reference to the consent of any other State cannot be denied. Can the valid exercise of this power to change the status of its citizens be dependent upon whether or not at some former time another State in the exercise of a similar power had created for a person then a resident of that State a different status, which in its very nature was subject to change? When the status of this person is brought into question merely by the challenge of his capacity to sue, as in the instant case, reason and precedent alike support the proposition that the law of the domicile which last operated on and fixed the status of the party in

a proceeding which resulted in a judgment valid where rendered, should be given full force and effect everywhere, in obedience to the behest of the Constitution, and not merely as a matter of comity. But, fortunately for appellant, if mistaken in regard to the conclusiveness of the judgment of the court of his domicile under the full faith and credit clause, his status so fixed by the law of his domicile must be recognized under principles of comity, which have become a part of the jurisprudence both of Louisiana and Tennessee.

Appellees in their brief, pages 14-15, rely on the Chaloner case, which, we insist, is wholly inapplicable to the instant case. Appellees are mistaken in their insistence, on pages 14 and 15 of their brief, that the nature of this case was such as to entitle appellant to rely on a Virginia judgment, either under the full faith and credit clause of the Constitution or on principles of comity, in view of the particular character of the action brought by him against his guardian in New York. From the very nature of the case no such claim, if made, could have been sustained by any court, for the question was not, as in this case, whether the appellant had the capacity to sue or to receive and validly receipt for an interest in an estate, but it was a suit against a guardian appointed under proceedings in a New York court, which had full jurisdiction, and involved the clear-cut contention that such proceedings were without jurisdiction and void. There were two branches of the Chaloner case, and we review them as follows:

Chaloner vs. Sherman Cases.

The case in 162 Fed., 19; 88 C. C. A., 673, arose from an application to the Southern District Court of New York for a writ to protect appellant from reincarceration in case he came into the State to try his case. The lower court denied the application. This was reversed and a writ granted. In 1897 the petitioner had been adjudged insane and ordered committed to the Bloomingdale asylum of New York, from

which he escaped in 1900 and went to Virginia. In 1899 the Supreme Court of New York adjudged him to be of unsound mind and appointed a committee for his person and property, which office was held by the defendant at the time of this application. In 1901, upon the appellant's application to the county court of Albemarle County, Virginia, where he resided, he was adjudged sane and capable of managing his affairs. In 1904 he brought an action in the United States Circuit Court of New York for damages against the defendant, his guardian, upon the ground that the orders of the Supreme Court of New York adjudging him insane and appointing such guardian were void for want of jurisdiction. Defendant relied on this order and judgment being valid, and further alleged that the judgment of the Virginia court was collusive and void. The time for trial of this suit approaching, petitioner fearing that if he returned to New York he would be incarcerated, filed a petition for a protective writ. The court in granting it said:

> "The Constitution of the United States vests in its judicial department jurisdiction over controversies between citizens of different States. The petitioner, as a citizen of the State of Virginia, in bringing his suit in the circuit court of the United States, was availing himself of a right founded upon this constitutional provision. And he came into that court with a decree of the court of the State of which he was a citizen declaring his sanity. *We cannot disregard that decree. In considering it, we do not ignore the orders of the courts of New York. Insanity is not necessarily permanent.* For the purposes of this petition—laying aside jurisdictional questions—we may properly consider that the petitioner was insane when so declared in New York, but that he had recovered his sanity when he was declared sane in Virginia. (Italics ours.)
>
> * * * * * * *
>
> "The next objection is that the petitioner ought to apply to the courts of the State of New York for the rescission of the orders committing him to the asy-

> lum, and appointing a committee of his person and property. We have not the slightest doubt that full justice would be done the petitioner should he submit himself to the jurisdiction of the State courts. But to assume that he was under any obligation to resort to them is to beg the whole question at issue. To say that the orders in question were valid, and must stand until set aside by the tribunals which granted them, is to assert that the petitioner has no cause of action in the circuit court. But he states a cause of action. He asserts that the orders were wholly void for want of jurisdiction. And, if they were void, they were of no effect, and the petitioner had a right to assert their invalidity in any court."

The main case, reported in 215 Fed., 867, was a straight-out suit for damages against a New York guardian, based solely and exclusively on the theory that the judgment of the New York Supreme Court, declaring appellant to be insane and appointing a guardian or committee for him was wholly void. The court said:

> "The sole question is whether that judgment is void or was procured by extrinsic fraud so as to subject it to a successful collateral attack in another jurisdiction."

Further:

> "Insanity is, of course, not necessarily a continuing condition, but the trial court was right in holding that Chaloner's present condition never became an issue in the case and could not have become so, unless the court below had been justified in collaterally setting aside the decretal order.
>
> "Then, if defendant had adduced some evidence of present incompetency as an affirmative defense, and then only would the present mental condition of plaintiff have been an issuable fact."

It thus appears that the question of his right by virtue of the Virginia judgment was not brought into play at all, as

his action in trover for damages was based solely on the theory that the defendant was a guardian *de son tort*, who was guilty of conversion of his ward's property, because he had acted under a void judgment.

The court expressly recognized that insanity was not a continuing condition, and that therefore appellant might be entirely sane at the time the suit was brought, and still have been insane at the time of the judgment of the Supreme Court of New York, which court had jurisdiction of both his person and his property. The statement of the court that if the petitioner has recovered and is no longer insane, this fact should be brought to the attention of the State court, and that this court would unquestionably restore the appellant to his rights if his sanity was established, was merely a suggestion as to procedure in a case in which the plaintiff had escaped from an asylum in New York, gone to Virginia in which State he was subsequently declared sane, but the validity and effect of this adjudication or the credit to be given it either under the full faith and credit clause or principles of comity were in no way germane to the issue, the question being not whether plaintiff was a person *sui juris* at the time of trial, but whether the New York court had acted within its jurisdiction in appointing a guardian; because the court said:

> "Our conclusion is that the judgment of the New York court was not a void judgment, and it must remain valid until reversed or set aside by the courts of New York"

which was an apt statement of the law applicable where damages were sought against a guardian solely on the theory that the judgment appointing him was utterly void.

This opinion of the Court of Appeals was affirmed by this court in Chaloner *vs.* Sherman, 242 U. S., 455, where it was held that the validity of this judgment was not open to a collateral attack in such a suit for damages against the guar-

dian, and that the judgment was not void. We quote from the opinion of the court:

> "It was also contended that about November 6, 1901, the plaintiff being a citizen and resident of Albemarle County, Virginia, was adjudged by its county court to be of sound mind and capable of managing his person and estate; that he was such at the time of the commencement of this action and has been since. Much evidence was offered to support these contentions; but the facts if established could not overcome the defense presented by the orders of the Supreme Court of New York. That court had jurisdiction because the plaintiff and his property were in New York; and the essentials of due process of law were met. The orders, consequently, are not void; and they are not subject to this collateral attack. See United States *vs.* Throckmorton, 98 U. S., 61; Hilton *vs.* Guyot, 159 U. S., 113, 207. If it be true that the orders ought to be set aside either because they were, as alleged, entered corruptly, irregularly, or inadvertently, or because owing to a change in plaintiff's condition a committee is no longer required, the remedy must be sought by a direct proceeding to that end. Matter of Curtiss, 137 App. Div,. 584; 199 N. Y., 36. No evidence was introduced to prove that even an attempt was made to vacate or modify the orders. In this action of *trover* which seeks merely damages for alleged wrongful withholding of plaintiff's property, the existing orders constitute a complete defense. The evidence offered was properly excluded, and there was no error in directing a verdict for the defendant."

It thus conclusively appears that the question of the status of the person at the time of the institution of the suit was in no way material, and that his action was purely one sounding in damages, based on the claim that the judgment appointing a guardian for him was void. In the instant case the appellant makes no such contention as to the judgment in Louisiana, simply relying on a subsequent judgment of a court of competent jurisdiction of the State of his domicile,

fixing his status as that of a person *sui juris,* which under the Constitution, sections 1 and 2, of article 4, as well as on principles of private international law, he claimed the right to maintain this particular suit in the Federal court in Louisiana. Is it possible that a citizen of Tennessee, whose status is that of a person *sui juris,* can be denied the capacity to sue in a Federal court of Louisiana? The right of a person *sui juris* to sue is a fundamental right, and where a citizen of another State *sui juris* by the laws of his domicile institutes a proceeding in a Federal court, which is within its cognizance, it cannot on any supposed aspect of comity deny the capacity of such person to sue in said court and relegate him to the State courts, thus in effect abandoning its own jurisdiction.

McClellan *vs.* Garland, 217 U. S., 268.
Chico County *vs.* Sherwood, 148 U. S., 529, 534.

In Cole *vs.* Cunningham, 193 U. S., 107, 114, it was said that—

> "The intention of section two of article four was to confer on the citizens of the several States a general citizenship, and to communicate all the privileges and immunities which the citizens of the same State would be entitled to *under the like circumstances,* and this includes the right to institute actions."

In Chambers *vs.* Baltimore & Ohio R. R., 207 U. S., 142, 148, the court said:

> "The right to sue and defend in the courts is the alternative of force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each State to the citizens of all other States to the precise extent that it is allowed to its own citizens. Equality of treatment in this respect is not left to depend upon comity between the States, but is granted and protected by the Fed-

eral Constitution. Garfield *vs.* Coryell, 4 Wash. C. C., 371, 380, per Washington, J.; Ward *vs.* Maryland, 12 Wall., 418, 430, per Clifford, J.; Cole *vs.* Cunningham, 133 U. S., 107, 114, per Fuller, C. J.; Blake *vs.* McClung, 172 U. S., 239, 252, per Harlan J."

While this court will not review the decision of a State court on a question of comity, if no provision of the Federal constitution is violated (Finney *vs.* Guy, 189 U. S., 335), nevertheless, in a suit of this character, brought in the first instance in a Federal court, it will determine for itself whether a rule or policy has been established by the legislation or decisions of the State of Louisiana under which the status or capacity of a person is to be determined by the law of his domicile, and if so it will enforce that rule as being clearly in harmony with, rather than opposed to the laws or public policy of said State.

But even if the status of petitioner was an open question, notwithstanding the judgment of the probate court of Shelby County decreeing him sane, or if as seemed to be the idea of the trial judge the judgment of this court was offset by the judgment of the court in Louisiana, and that he was *sui juris* in Tennessee and not *sui juris* in Louisiana, then the judgment of the probate court, being a later judgment, was at least *prima facie* evidence of his sanity, if not conclusive under the Constitution or by comity.

> "The presumption, whether conclusive or only *prima facie*, extends to all the world, and includes all persons, whether they have notice of the inquisition or not."
>
> Hughes *vs.* Jones (N. Y. Court of App.), 22 N. E., 446, 448.
>
> Hart *vs.* Deamer, 6 Wendel, 497.
>
> 1 Greenleaf on Evidence, sec. 556.

There is a presumption that one suing in his own right is competent.

> Hanson *vs.* Hanson (Circuit Court of Appeals, Second Circuit), 234 Fed., 853.

In the instant case there was not only a presumption of sanity from the mere fact that the party brought the suit, as a person *sui juris* as held in the Hanson case, but a presumption arising from the judgment of a court of competent jurisdiction, declaring him to be sane, after the judgment of the court in Louisiana, interdicting him, for this judgment would *at least* make out a *prima facie* case of sanity. But in addition to this, there was other proof in the record which showed his complete restoration to sanity and absolutely none to rebut it.

But the appellees are committed to the proposition that an inquisition proceeding and judgment, where the court has jurisdiction, is entitled to full faith and credit, because they plead and rely on the judgment in Louisiana interdicting the appellant, and in their brief in this court they in effect concede that if the probate court of Shelby County had jurisdiction the judgment of said court fixing the status of the appellant as that of a person of sound mind would be equally entitled to full faith and credit under the Constitution. And it is because of this that they attempt to deny what the learned district judge below practically conceded, namely, that the appellant had acquired a domicile in Shelby County, Tennessee, and that the probate court of said county had jurisdiction to pass upon his personal status and to pronounce him sane. For in his opinion he paradoxically sums up the situation as follows:

> "The situation therefore is this: The plaintiff is judiciously *sui juris* in Tennessee and not *sui juris* in Louisiana" (Rec., p. 69).

Untenable Contentions of Appellees.

On page 8 of their brief, appellees negatively state their positions in the form of several emphatic denials. They deny that appellant had the capacity to acquire a domicile in Tennessee, deny that the judgment of the probate court

of Shelby County had any validity in Tennessee, even if appellant were domiciled therein; deny that said judgment if authorized by the law of Tennessee could have any effect outside of Tennessee; deny that it could in any way meet or overcome the effect of the Louisiana judgment, because said judgment was based upon Gasquet's being a morphine addict and drunkard, while the proceeding in Tennessee was a writ *inquirendo de lunatico,* and had no relation whatever to alcoholism and addiction to morphine; and finally they "deny that a court of equity has jurisdiction, in any event, of such a proceeding as attempted in this case, or has power to grant the relief sought in this case, the property involved being in the custody of the State probate court, and the jurisdiction of the State probate court being exclusive and beyond interference" (Brief, p. 8).

We take up the questions involved in these several denials in the order in which they are set forth by the appellees.

(1) *The Capacity of a Person Who Has Been Adjudged to be of Unsound Mind, Other than of a Permanent Nature, to Acquire a New Domicile.*—We confidently submit, after a somewhat thorough investigation of the law bearing on the subject as found both in adjudicated cases and in textbooks, that no respectable authority can be produced to sustain the contention now made that a person who has been adjudged incapable of taking care of his person or property because of his mental condition, but not permanently insane, and for whom no guardian has been appointed, is absolutely precluded from acquiring a new domicile while said adjudication is still in force. The authorities almost without exception are to the contrary and most of them go to the extent of holding that even where a committee or guardian has been appointed after the adjudication of insanity, the party, unless an idiot or entirely bereft of reason, may acquire a new domicile, upon proof of mental capacity supervening sufficient to enable him to exercise a choice as to domicile.

"The determination of a lunatic's domicil would seem to hinge upon the question whether there has been an adjudication of lunacy, or rather whether his *person* has been actually committed to the custody and control of a legal guardian or committee.

"Indeed, so far as his national or quasi-national domicil is concerned, a question has been made whether even an adjudication and commission of lunacy would be given such force in other States as to affect the lunatic's right, should he go to another State, to acquire a domicil there. It is submitted that the gist of the inquiry in such cases is not whether the adjudication of lunacy shall be given exterritorial effect *ex proprio vigore*, but whether as a matter of evidence, the action of the court of one State should not be taken as very strong evidence, if not conclusive, of the proposition that, *at the time of such decree*, the party was really of such unsound mind as to require his person to be controlled.

"But while this last principle is believed to be sound, it is applicable only to the party's state of mind *at the time* of the decree. The continuance of that state of mind may be rebutted. *It is not indispensable that there should be an adjudication of restoration to sanity by the same or any other court.*

"The true principle therefore would seem to be that a lunatic, whose *person* has been placed under the control of a guardian or committee, is *prima facie* incompetent to establish a domicil in another State, but, upon satisfactory proof of mental capacity supervening, such domicil may be recognized. In any event, the mere fact that the control of the lunatic's *property* has been committed to a guardian or committee will not suffice to prevent him from choosing even a *municipal* domicil, much less a national or quasi-national one." (Italics ours.)

Minor's Conflict of Laws, sec. 55, pp. 107-108.

Harral *vs.* Harral, 39 N. J. Eq., 379; 51 Am. Rep., 17, 21.

Concord *vs.* Rumney, 45 N. H., 423.

Rodgers *vs.* Rodgers, 56 Kan., 483; 43 Pac., 779, 781.

Talbot *vs.* Chamberlain, 149 Mass., 57, 59; 20 N. E., 305; 3 L. R. A., 254.

Mowry *vs.* Latham, 17 R. I., 480; 23 Atl., 13.

"The domicil of a person *non compos mentis* is, by reason of his mental disability, usually not within his control, but under the control of his guardian, who may appoint the place of his residence. The domicil of an idiot may be changed by the direction or with the assent of his guardian, whether express or implied. This is especially true in case a person is wholly bereft of understanding; but it does not follow that the same incapacity attaches to all degrees of mental disability, for though one may be unable to manage his property or business with good judgment and may need a guardian to protect his interests, he may, nevertheless, have sufficient understanding to choose his domicil."

9 R. C. L., p. 550.

Jacobs declares that it is difficult to lay down any rule which would serve to fix the line dividing the capacity to change domicile from incapacity on the score of mental unsoundness.

Jacobs, Law of Domiicl, sec. 264.

"Where one *non compos mentis*, on the death of his father, goes to live with a brother, making there his permanent and fixed residence, he becomes domiciled there, notwithstanding a guardian is appointed residing at his domicile of origin."

Cutts *vs.* Haskins, 9 Mass., 543.

"An alleged lunatic, for the appointment of a guardian for whom a petition is pending, can, if mentally capable, change his domicile to another state, though the guardianship resulting from such proceedings continues until his death, and the courts of the new domicile have original probate jurisdiction of his estate.

Talbot *vs.* Chamberlain, 149 Mass., 57; 20 N. E. 305; 3 L. R. A., 254.

27 Cent. Digest Col., 2554.

In Concord *vs.* Rumney, 45 N. H., 423, it was held that "there are many varying degrees of insanity, and only a

small mental capacity is required to select a domicile," and that the party in that case had such capacity, notwithstanding his marriage had been declared void on the ground of insanity.

In Mowry *vs.* Latham, 17 R. I., 480; 23 Atl., 13, in an opinion by Chief Justice Matteson, it was held that though a party had been adjudged *non compos* and a guardian actually appointed for him, who, however, exercised no control over him, he could nevertheless acquire a domicile different from that of his guardian, if he "was not so devoid of understanding as to be incapable of changing his domicile." The court said:

> "We do not think that the mere appointment of a guardian who has never exercised any control over the person or estate of his ward, would prevent the ward if of sufficient mental capacity, from changing his domicile."

The case of Talbot *vs.* Chamberlain, supra, involved the direct question of whether a change of domicile had been effected by a person of unsound mind, over whom the courts of the domicile of his origin had acquired jurisdiction in an inquisition proceeding. We quote:

> "When Mr. Stone left this State and went to Iowa to establish his residence there, he had sufficient mental capacity to change his domicil, and he was not under guardianship. The petition for the appointment of a guardian over him was pending and he had attended a hearing upon it; but there was no adjudication that he was a proper subject for guardianship, and no appointment of a guardian until several weeks after he took up his residence in Iowa. He was under no custody or restraint, and there was no one who had a right to assent or object to his removal."

In Rodgers *vs.* Rodgers, 56 Kans., 483; 43 Pac., 779, a guardian had been appointed for a party after an adjudica-

tion of insanity in the courts of Kansas. He thereafter went to West Virginia, where he took up his permanent residence, where he was regarded as sane, but no proceedings were had there restoring his status as a person *sui juris*. Notwithstanding this, the courts of West Virginia entertained a suit for divorce against his wife, on whom constructive service by publication was had. Thereafter his wife sued him in the State of Kansas, and the judgment of the West Virginia court granting him a divorce was relied on and was accorded full faith and credit, under the Constitution of the United States. The fact that a guardian had been appointed for him in Kansas did not prevent his acquiring a domicile in West Virginia, and did not prevent the courts of that State from recognizing his capacity to sue. We quote from the opinion:

> "It is true that a presumption of continued insanity arises fro man adjudification thereof, but htis is not conclusive, and the evidence of the sanity of Alvin S. Rodgers ever since 1886 is sufficient to overthrow the presumption arising from the adjudication in 1883. An adjudication of restoration by the probate court is not indispensable, but the presumption of continued insanity may be overcome by other evidence. Water Supply Co. *vs.* Root, 56 Kan., ——; 42 Pac., 715."
>
> See also 14 Cyc., 1848, and cases cited.
>
> "Pretended unchangeableness of domicile of his interdiction has no support in our law."
>
> Laurent, vol. 5, art. 332.

The evidence presented at the hearing conclusively showed that appellant did have sufficient mental capacity to select his domicile, even at the very time he went to Tennessee. There was evidence that prior to his leaving Louisiana his sanity had been restored (Rec., pp. 36, 38). But even if he had not at the time that he went into Tennessee sufficient capacity to choose a home, if as a matter of fact he

did acquire a residence there, which is undisputed, and after acquiring said residence he had the capacity to determine that he would make Tennessee his permanent home, and formed the fixed purpose to remain in Tennessee and become a citizen thereof, then he thereby acquired a new domicile.

> "To constitute the new domicil two things are indispensable: First, residence in the new locality, and, second, the intention to remain there. The change cannot be made except *facto et animo*. Both are alike necessary.
>
> * * * * * * *
>
> "Among the circumstances usually relied upon to establish the *animus manendi* are: declarations of the party; the exercise of political rights; the payment of personal taxes; a house of residence, and a place of business. Phillim., 100; Whart., sec. 62, and *post*."
>
> Mitchell *vs.* U. S., 21 Wall., 350; 22 L. Ed., 588.
>
> Gilbert *vs.* David, 231 U. S., 561, 568.

All the indicia of change of domicile are shown in the instant case. Moreover, the Civil Code of Louisiana, article 46, expressly provides that "the acquisition of residence in any other State of this Union, or elsewhere, shall forfeit a domicile within the State." That appellant gave up his residence in Louisiana and did acquire another residence in Tennessee; that by repeated declarations in writing and under oath he expressed his fixed purpose and intent to remain in Tennessee as a citizen thereof; that he became a qualified voter and paid poll-tax, and otherwise owed his allegiance to Tennessee and exercised the rights of citizenship therein, are all shown by evidence wholly uncontradicted. It is the fixed rule that a person must have a legal domicile somewhere, and that "no natural person can have more than one domicile at a time."

Minor on Conflict of Laws, sec. 28, p. 68.
Dicey Conflict of Laws, 96-97.
State *vs.* Steele, 33 La. Ann., 910.

The case of *In re* Curtis, 199 N. Y., 36; 92 N. E., 396, is relied on by appellees to support their contention that appellant could not establish a new domicile. We submit that it is inapplicable.

In that case a lady who had her domicile in Connecticut, and possessed property there, was adjudged by the probate court to be an incompetent, and a committee appointed. Thereafter the same committee were named by the Supreme Court of New York as a committee jointly of her property within that State. Thereafter upon her application this order was vacated, but subsequently reversed by the appellate division, which adjudged that the petitioner had her domicile in and was a resident of Connecticut, and that the Connecticut court had full jurisdiction of her person. Thereupon she filed a petition for a commission to inquire into her sanity. The order allowing such commission was reversed by the appellate division, and she applied for a supersedeas to the Court of Appeals. It was held that the granting of a supersedeas was a matter of discretion, that the appellate division had the power to review the power exercised by a special term court, but the Court of Appeals was limited in its jurisdiction to review questions of law, and could not review the discretion of the appellate division. This the court held would be conclusive even if the party were domiciled in New York, but it was claimed that she had been brought by the Connecticut conservators of her person and property into New York temporarily, and the question was whether she had gained such residence as would entitle her to apply to the courts of New York for supersedas; and this was held to be a mixed question of law and fact which the appellate division had determined against her; *that court holding that she was a resident of Connecticut*, and should apply to the courts of that State, which had jurisdiction of her person and property; and, moreover, that the courts of New York had never attempted to pass upon the question of her competency, but had "only given full faith and credit to the decree of the Connecticut court and extended the conservators appointed

by it to the property of the incompetent in this State, pursuant to the provisions of our Code already alluded to."

There the party was under a guardian, and the court which had the jurisdiction to pass on the question of the intent of the party and his guardian in coming to New York had adjudicated that as a matter of fact there had been no change of residence, with any view or purpose of effecting a change of domicile. Indeed, this is an authority to sustain the proposition that the status must be determined under the law of the domicile and that the judgment of the court of domicile establishing such status should be recognized everywhere.

Under the uncontradicted evidence in the instant case appellant, who was not under guardianship, did have the mental capacity to choose a home, and under the overwhelming weight of authority his declarations, acts and conduct furnish all the indicia necessary to show that his domicile in Louisiana was abandoned and a new domicile acquired in Tennessee; and as before stated, the court below practically determined this question against the appellees by taking jurisdiction of the case on the merits, in the face of the fact that such jurisdiction was directly challenged, on the ground of a lack of diversity of citizenship, and by holding that appellant had sufficient mental capacity at times to select a domicile. Appellees do not contend that he was bereft of reason, or that the Louisiana court adjudged him permanently insane. Indeed, in their effort to escape the effect of the judgment in Tennessee, they practically take the position that he was not adjudged by the Iouisiana court to be of unsound mind at all, but merely that he was a drunkard and addicted to drugs, of which habit the evidence, apart from the judgment of Tennessee Court declaring him to be of sound mind in every respect, showed that he was cured, prior to the institution of this suit.

(2) *Tennessee Judgment Valid and Entitled to Full Recognition.*—It is contended by appellees that even if under

the evidence and the law applicable thereto the appellant did have capacity to acquire a domicile in Tennessee and did acquire such domicile, both of which we insist were conclusively shown by competent proof, nevertheless the probate court was without jurisdiction to render judgment that the appellant was of sound mind and competent to control himself and his property. It is insisted in the first place that the proceedings under which the appellant was adjudged in Tennessee to be absolutely sane and entirely competent to control himself and his property were instituted under chapter 149 of the acts of 1887 (Rec., p. 13), and that this statute shows on its face that it was intended "solely to provide a method by which a Tennessee judgment of commitment may be set aside" (Brief, p. 12). The caption of the act is as follows:

> "An act conferring jurisdiction on the County Court to declare persons who have been declared lunatics, or of unsound mind, of sound mind, and to restore to them control of their property."

And the contention made by appellees is based on language continued in section 1, which provides:

> "That when any person shall be declared a lunatic or person of unsound mind, as now provided by law, and afterwards shall become restored in mind, such person," etc.

And the provision in section five that if the appellant be declared a lunatic the costs shall be paid out of his estate, and the provision of section 6 that if he should be adjudged to be of sound mind, competent to control himself and his property, a decree shall be so pronounced and the guardianship of such person shall terminate; and also on the language contained in section 9, as follows:

> "The application provided for herein may be made in any county, where the applicant may reside, or where his property or guardianship may be."

The attorneys for appellees set out in an appendix to their brief sections of Shannon's Code relating to the jurisdiction of the said court, as well as the chancery court, over persons of unsound mind, and also the act of 1887 under sections 5491-5495, inclusive, and it is argued that all these provisions, like the articles of the Civil Code of Louisiana, constitute one complete and harmonious system.

In the first place, this court knows that there has been no legally adopted Code of Tennessee since 1858 and that the so-called "Shannon's Code" is a mere compilation. In 1797 the county courts of the State of Tennessee were clothed with exclusive jurisdiction over the matter of inquisitions for unsoundness of mind (Oakley *vs.* Long, 10 Humph. (Tenn.), 253). Later, to wit, in 1851, chancery courts of that State were given concurrent jurisdiction with the county court when the person owned property in the State to the amount of $500 or over, subject to guardianship (Shannon's Code, secs. 5451-5462). The probate court of Shelby County was given all the jurisdiction of the county court, and more. It is a court of record of dignity and possessing wide jurisdiction, as shown by the following excerpt from the opinion of the Supreme Court of that State in Shaller *vs.* Garrett, 127 Tenn., 665, 668:

> "The right of appeal from a county court, proper, to this court, is, under governing statutes, by no means narrow in scope. Key *vs.* Harris, 116 Tenn., 161, 168; 92 S. W., 235; 8 Ann. Cas., 200. And it seems to have been the purpose of the legislature by that act to make of the probate court of the most populous county in the State a court of dignity, with jurisdiction augmented far beyond that exercised by the ordinary county court."

That the probate court had jurisdiction of the subject-matter—that is to say, the status of the petitioner's mind, his personal capacity and his relation to other members of the community—is shown by the acts creating the county court and said probate court; independent of the act of 1887,

chapter 149, compiled in Shannon's Code, under sections 5491-5499, inclusive—this latter act being passed nearly one hundred years after the full jurisdiction was given the county court to determine and pass on the question of the soundness of mind of any one within the jurisdiction of said courts, and to render just such a judgment as was rendered in this case, adjudicating the appellant to be of sound mind and competent to control himself and property.

In reply to the contentions of the appellees, we say in the first place that this act of 1887 was a separate and independent statute, which was not a part of the Code system, and which did not in any way refer to the original act of 1797, and that under it any citizen of Tennessee who had theretofore been adjudged insane or otherwise of unsound mind and who wished to have the question of the restoration of his sanity inquired into, could do so under this act, regardless of where the former adjudication had been made.

This act provides that when *any person* shall be declared a lunatic or person of unsound mind, as now provided by law, and afterwards shall become restored in mind, he may have the benefit of the act. It is broad and comprehensive, and clearly intended to give the benefit of the act to every citizen who had once been adjudicated of unsound mind and who had become restored. It applies to all citizens in Tennessee in that condition. If it had been intended to limit it to citizens who had been adjudicated of unsound mind under the law of Tennessee alone, it would have so stated. On the contrary, it clearly applies to every citizen who may have been declared of unsound mind under a legal proceeding anywhere. It will not be presumed that the legislature intended to exclude from the operation of this beneficial act any of its citizens who had once been declared insane. To limit and restrict the provisions of the act to those who had been adjudicated insane by a Tennessee court would be to impute to the legislature a purpose to discriminate against its other citizens who had at one time been adjudicated to be of

unsound mind in accordance with the laws of another State. It will not be presumed that the legislature intended to require such of its citizens to return to the State which had pronounced such interdiction.

The statute, moreover, expressly negatives the idea that a party would have to apply to the court which had originally declared him insane, for by section 9 of the act, Shannon's Code, section 5499, "the application may be made in any county where the *applicant may reside, or* where his property *or* guardianship may be."

It is claimed that because in section 6 it is provided that if the party is adjudged of sound mind the guardianship shall terminate and he may demand settlement of his guardian, and that in section 9 it is provided in the alternative that the proceedings may be brought where the property or guardianship may be, this shows that the statute is confined to proceedings to restore persons who were adjudged insane or otherwise of unsound mind by the courts of Tennessee, whose property is in Tennessee, but by this act it is expressly provided that the application may be made not only where the property or guardianship may be, but where the *applicant* may reside, *or* whether his property may be located. It thus clearly appears that the act was not intended to apply only to persons who had property in Tennessee, or who had a guardianship there, because it specifically provides that the applicant may file the proceeding in any county where he may reside. While of course it is applicable to citizens of Tennessee who have been adjudicated of unsound mind by the courts of that State, and does apply to such citizens who may have property in that State, or may have a guardian in that State, it is not limited to such citizens, and if it had been intended to be so limited, it would not have been expressly provided in section 9 that the proceeding could be instituted in any county where the applicant himself resided. Of course, if it had been intended to apply only to citizens of the State who had been adjudged

insane by the courts of Tennessee, it would have provided that they must make application to that court, which had previously declared them incompetent. The whole purpose of the act shows that it was intended to apply to "any person" who was a citizen of Tennessee, and who had at any time theretofore been adjudged to be of unsound mind, so as to be incapable of taking care of his property.

Words having universal scope, such as "every person," etc., must be taken to mean every one subject to such legislation.

American Banana Co. *vs.* United Fruit Co., 213 U. S., 257.

"Any person" as used in Code of North Carolina, section 210, allowing "any person" to sue *in forma pauperis* on making affidavit that he is unable to make security, is broad enough to include any litigants whatever, and hence residents of another State.

Christian *vs.* Railroad Co., 136 N. C., 321.

This statute is remedial in its nature, and must be liberally construed.

Scott *vs.* Read, 10 Peters, 524.

"Where the expression is special or particular, but the sense is general, the expression shall be general."
Insurance Co. *vs.* Stallings, 110 Tenn., 1.

Where a statute is capable of two constructions, it is to be presumed that the legislature intended to do that which is just.

Wise *vs.* Morgan, 101 Tenn., 272.

In Brown *vs.* Lamb, 119 Iowa, 404, it was held that the word "inhabitant" found in the statute providing for inquisition and appointment of guardian, should not be given a strict construction so as to make it applicable only to those who had a legal domicile in the State. This case was

followed in the recent case of Hayward *vs.* Hayward (Appellate Court of Ind., 1917), 115 N. E., 967, 974.

The mere fact that in one part of the act, section 6, it is provided that the person in the event of being adjudged sane may demand settlement of his guardian, does not mean that the said act was intended to apply only to those who had a guardian in Tennessee, because in the first place other parts of the act show that it was intended to apply to persons who did not have any guardians at all, or one residing in an entirely different jurisdiction. If it had been intended to limit the benefits of this act solely to one particular class of citizens, namely those for whom a guardian had been appointed under a judgment of some court in Tennessee, does it not stand to reason that the legislature would have required that the proceeding be instituted in the court where said judgment was originally rendered, and not in another court of merely concurrent jurisdiction, or at least in the jurisdiction in which the guardian, if any, resided. But all doubt as to this is eliminated by the express provision in the act that the proceeding may be instituted in any county in which the *applicant* may reside, *or* where he may have any property. Any person who is in the condition specified in the act, namely, who has once been adjudged of unsound mind in the manner provided by any law, not simply the law of Tennessee, and who is domiciled in Tennessee and wishes to have the court inquire into his sanity, may do so in the manner provided by this act, by making his application to the court of the county in which he resides. No notice is required to be given any guardian, whether resident or non-resident, as it is assumed that it is only necessary that the court should have jurisdiction over the *res*, which is acquired by the person making the application to have his status determined.

> "Jurisdiction is the right to hear and decide, and it must be exercised, speaking in a broad sense, in one of two modes—either *in rem* or *in personam*."
> Oberby *vs.* Gordon, 177 U. S., 214, 221.

A complete answer to the contention of appellees relative to the jurisdiction of the probate court to pronounce the judgment relied on by appellant is that, independent of the act of 1887, the probate court of Shelby County had full jurisdiction under the act of 1797 and amendments thereto, compiled in Shannon's Code under sections 5451-5460, to render the identical judgment which was rendered by it in the proceedings initiated by the appellant. A comparison of the original act embraced in sections 5451-5454, Shannon's Code (pp. 31, 32 of Appendix to Appellees' Brief), with sections 5491-5494, inclusive, of Shannon's Code, being part of the act of 1887, set out in the appendix to appellees' brief, pages 40, 41, will show conclusively that our contention is sound. Whether the proceeding was instituted under the original statutes giving the county court jurisdiction over persons and estates of idiots, lunatics, "and other persons of unsound mind," or under the act of 1887, the nature of the information necessary to be given to the court in order to invoke its jurisdiction is practically the same. Under the original act it is provided that upon information made to the county court that any person of unsound mind is within the jurisdiction of the court, the court shall order the sheriff to summon a jury of twelve freeholders to ascertain by inquisition the state of mind of said party, and whether he is sane or insane, and under the act of 1887, section 5491 of the Code, it is likewise provided that when any person shall have been declared of unsound mind and shall afterwards be of the opinion that he is restored, he may make his application to the court, which shall then order the sheriff forthwith to summon a jury of twelve freeholders "to ascertain by inquisition the condition of such person's mind and make return thereof." The rights in each case, as shown in Shannon's Code, sections 5453 and 5492, in respect to its essential provisions, namely, as to the purpose of the inquiry, are practically the same; also the method of conducting the inquisition is the same in each case; also as to the costs being adjudged against the applicant if he is adjudged to be insane

(sections 5436, 5495), and under both the original statute and the act of 1887 the substance of the judgment or decree of the court is the same in each proceeding, namely, that a person is an idiot, lunatic, or a person of otherwise unsound mind, if so adjudged, or that he is of sound mind and capable of taking care of himself and property as the jury may find in either case. And there is no particular form for such judgment in either case. He may be found to be of unsound mind under either statute, and in such event it will be so decreed. On the other hand, if found to be of unsound mind and competent to control himself and his business, a guardian will not be appointed under the original act, and under the proceedings instituted under the act of 1887, the guardianship, if one exists, will of course cease. There is not the shadow of doubt that under the original act of 1797 the information necessary to give the court jurisdiction to determine whether a person is of sound mind, or of sound mind sufficient to control himself and his business, may be given by any one, including the person himself, because all that is required by the provisions of said statute is that the court shall acquire such information in order to give the court jurisdiction and justify the issuance of the writ for the purpose of having a jury empaneled to pass on the mental condition of the party. In view of the broad language of the act, no authority is needed to sustain this contention, but the Court of Appeals for the Eighth Circuit, in Cockrill *vs.* Cockrill, 92 Fed., 811, 818, had occasion to construe a similar statute and reached the conclusion for which we contend. We quote from the opinion of said court:

> "Section 5549, Rev. St. Mo., 1889, provides as follows:
>
> " 'If any person shall allege in writing, verified by oath or affirmation that any person declared to be of unsound mind, has been restored to his right mind. the court, by which the proceedings were had, shall cause the facts to be inquired into by a jury.'
>
> "Section 5550 provides, in substance, that if it

be found that such person has been restored, he shall be discharged from care and custody, etc. The language of section 5549 is certainly broad enough to permit any one to inaugurate the inquiry as to the continued insanity of a ward, and I know of no one more interested in the commencement of such proceedings than the person who believes himself to have been restored, and entitled to be discharged from bondage. To deny him this privilege might be the means by which evil-disposed persons could permanently restrain him of his liberty, and deprive him of his rights. A construction of the statute which will permit the ward to petition for his own discharge is in harmony with the practice pursued in the chancery courts of England, in exercising their jurisdiction over insane persons (Busw. Insan., sec. 69); and, in the absence of statutes to the contrary, generally, prevails in the State of this Union (Id., sec. 70; *In re* Hanks, 3 Johns., ch. 567; *In re* Christie, 5 Paige, 242).

"In the case of McDonald *vs.* Morton, 1 Mass., 543, the Supreme Court of Massachusetts, in dealing with this subject, says: 'The law contemplates that there may be a time when a person in the situation of appellant (under guardianship as an insane person) may be restored to his reason. I do not think he is to be left to his friends. Their ignorance of the fact, carelessness, or inattention ought not to leave him in bondage forever,'—and accordingly held that he might, by his own petition, institute an inquiry concerning his restoration. Inasmuch as the statute of Missouri, in sufficiently comprehensive language, confers this right upon any person, I am not disposed, in the light of reason or authority, to deny the right to the person above all others most interested in it."

This court is not concerned with the mere methods of procedure in a State court where that court is shown to have jurisdiction of both the subject-matter and the necessary parties. The only person required to be before the court submitted himself to the jurisdiction of that court for the purpose of having it pass upon the question of his sanity or insanity, to establish his status either as a person competent or

incompetent to control himself and his property by reason of his mental condition. The subject-matter of which the court unquestionably had jurisdiction was the status of said party, arising from his mental condition and his relation to the rest of the community, and being domiciled within the jurisdiction of said court it had complete jurisdiction, and in exercising this jurisdiction it was asserting a right prerogative of a State to inquire into and judicially determine the status of its citizens in that respect.

(3) But appellees next insist that this judgment should not be given effect, because it merely adjudged the appellant "to be a person of sound mind and capable and competent to control himself and his property," whereas the Louisiana judgment did not find him to be of unsound mind, and the learned district judge in his opinion also stated that even if the Tennessee judgment was conclusive of plaintiff's sanity, nevertheless, the judgment of interdiction in Louisiana was on the theory that he was incapable of taking care of himself, because of the excessive use of drugs and alcohol, and that he might be considered sane and yet under the law of Louisiana subject to interdiction (Rec., p. 69). Our reply to this is: First. That while it is true that one may be interdicted for habitual drunkenness (Act 100, Laws of 1890), it must be found that the habit of using liquors, cocaine or other narcotic has been fixed on the person "to such an extent or degree as to deprive him of reasonable self-control" (Act 157, of Louisiana, 1894). There can be no interdiction in Louisiana for profligacy, or because of any physical infirmity, however great. The court must necessarily find some unsoundness of mind, or there can be no interdiction, and this unsoundness of mind must relate to his incapacity to control himself and his property. Moreover, if appellees had taken the position in the interdiction proceedings in Louisiana which they now take, namely that the condition on which the interdiction was sought did not consist of any unsoundness of mind, there would have been

no interdiction. Appellees find themselves between two horns of a dilemma when they insist that the adjudication in Tennessee that appellant was of sound mind and competent to control himself and property was a question not involved in the Louisiana proceeding; but that the Louisiana judgment nevertheless is conclusive that he did not even have sufficient mental capacity to chose a new domicile.

In Pons *vs.* Pons, 137 La., 26., the court had occasion to deal directly with this question, holding that the words "incapable of administering his estate" is elastic and covers different kinds and degrees of incapacity, but only those which grow out of mental condition. We quote:

> "There are some that do not fall within the meaning of said article 422; that for instance a blind man is incapable of administering his estate, so a paralytic and in fact many aged persons, and yet that no one would for an instant think of interdicting them. * * * The meaning of the Code is plain enough. It is that the person sought to be interdicted must be found not to be possessed by sufficient mentality to know whether the agents whom he or she is under the necessity of employing are faithful or not."

The original petition in the Louisiana court averred "that, owing to infirmities, said Gasquet is incapable of taking care of his person or administering his property" (Rec., p. 46), and in the supplemental and amended petition (Paragraph 2), "that Fernand Vaughan Gasquet is subject to an habitual state of insanity and madness, although he at times, when under the influence of narcotic drugs, appears to have possession of his reason;" and further "that said Gasquet has hardening of the arteries, due to nephritis *affecting his mental condition,*" and that he "is incapable of taking care of his person or administering his property." Neither petition contained any allegation of habitual drunkenness (Rec., pp. 52-53).

Under the pleadings the judgment in Louisiana neces-

sarily was that his incapacity to take care of his person and administer his estate was due to some mental unsoundness, howsoever produced. And the Supreme Court of Louisiana expressed the opinion that it was a case of alcoholic *insanity* (Interdiction of Gasquet, 136 La., 964).

Moreover, the pleadings and the judgment of interdiction of the Louisiana court were brought to the attention of the probate court of Shelby County, being set out in detail in the petition filed therein by appellant, and thus the very character of his mental unsoundness as thus adjudged by the Louisiana court was before the jury and judge of the probate court of Shelby County.

Under the statutes of Tennessee, as in Louisiana, three classes of persons are subject to the provisions thereof, namely, (1) idiots, (2) lunatics, (3) persons *otherwise of unsound mind*, so that they have not sufficient capacity for the government of themselves and property. In other words, the character of unsoundness of mind in the third class is of the very character which brought about the interdiction of the plaintiff in the parish court of Orleans, as shown by the judgment of that court, namely, that he did not have capacity sufficient for the government of himself and his property.

"Persons of otherwise unsound mind" include those who have not the possesion of reasoning faculties so as to enable them to understand and act with discretion in the ordinary affairs of life.

> Fentress *vs.* Fentress, 7 Heiskell (Tenn.), 434, and this is in accord with decisions in Louisiana.

(4) It is next claimed that this judgment, even if valid, has no effect outside of Tennessee. It is not our insistence that the law of the domicile, or the judgment rendered under the law *ex proprio vigore*, has any effect extra-territorially, but we do insist that the rights or status acquired under such laws or valid judgment rendered in accordance therewith are entitled to full recognition.

(5) The Federal court in Louisiana unquestionably had jurisdiction of the subject-matter of this suit, notwithstanding the claim of appellees that the jurisdiction of the probate court of Louisiana is exclusive.

The general equity jurisdiction of the district court of the United States to administer, as between citizens of different States, the assets of a deceased person within its jurisdiction, cannot be defeated or impaired by laws of the State undertaking to give exclusive jurisdiction to its own courts.

Green *vs.* Craighton, 23 Howard, 90.
Payne *vs.* Hook, 7 Wall., 425.
Lawrence *vs.* Nelson, 143 U. S., 215.

A suit to set aside a fraudulent sale made by an executor under orders of the probate court may be brought in the Federal court, although the State laws make the jurisdiction of the probate court exclusive in such cases.

Johnson *vs.* Waters, 111 U. S., 640.
Arrowsmith *vs.* Gleason, 129 U. S., 86.
Hess *vs.* Reynolds, 113 U. S., 927.
Waterman *vs.* Canal Bank, 215 U. S., 33, 45.

The appellant is entitled to have the Federal Court not only ascertain and fix the amount of his interest in the residue of the estate, but to decree his right and capacity to receive this from the executor and to a judgment against the executor, which of course would be given full force and credit in the due administration of the estate in the probate court.

In Wisconsin *vs.* Philadelphia & Reading Coal Co., and Frear *vs.* Western Union Telegraph Company, 241 U. S., 329, 333, the court reiterated that the judicial power of the United States is wholly independent of State action, and that States may not directly or indirectly abridge, limit or render such power inefficacious.

In conclusion, we earnestly submit that the capacity of the appellant as a person *sui juris* at the time of the institu-

tion of this suit, and his right to sue as such in the Federal court in Louisiana, should be accorded under constitutional guaranty; but irrespective of whether the judgment fixing his status as a person *sui juris* in accordance with the law of his domicile, either under the full faith and credit clause or under settled principles of private international law, was conclusive, that his status was as determined by said judgment as of the date of its rendition; or whether said judgment must be considered merely as *prima facie* evidence that plaintiff had the status of a person *sui juris* at the time of its rendition, he was nevertheless under all the proof entitled to maintain his suit, and the decree of the lower court dismissing his bill should be reversed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

October Term, 1917.

No. 261

FERNAND VAUGHAN GASQUET,
Appellant,

versus

CHARLES PAYNE FENNER, TESTAMENTARY EXECUTOR, ET AL.,
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

Brief for Defendants, Appellees.

STATEMENT OF THE CASE.

As appellant's statement of the case contains a very extended statement of the pleadings and of the evidence in

this case, including copious extracts from the pleadings in suits, the records of which were offered in evidence, we deem it necessary to make a succinct statement of the case and the facts.

Appellant Gasquet brought this suit in the United States District Court for the Eastern District of Louisiana against Charles Payne Fenner, testamentary executor of his mother, and his two sisters, all citizens of Louisiana.

(Record, pp. 2 and 3.) He alleged himself to be "a citizen of the State of Tennessee" and *"sui juris"*; that he and his sisters were the only descendants and heirs of his mother who had left her estate to them in equal portions, share and share alike; that he was informed, and averred that the estate had been fully administered; that the executor owed him an accounting; that he was entitled to have his one-third interest in the residuum of the estate delivered to him; that he was unwilling longer to own the residuum in indivision with his sisters, and desired to have a partition of the residuum made, all accounts between him and his said coheirs adjusted, and his share of the estate delivered to him in full ownership. The prayer of his petition was as follows (Rec., pp. 3 and 4):

> "Wherefore, plaintiff prays this Honorable Court:
>
> "(a) That the said defendant, Charles Payne Fenner, testamentary executor of the last will and testament of said Mrs. Louise Lapeyre Gasquet, deceased, be ordered to file a full account of his gestion of the Succession or Estate of Mrs. Louise Lapeyre Gasquet, deceased, and to deliver unto plaintiff, his undivided one-third interest in the residuum thereof.
>
> "(b) That a partition of the residuum of said Succession or Estate of Mrs. Louise Lapeyre Gasquet,

deceased, between plaintiff and Mrs. Martha Gasquet, wife of George G. Westfeldt, and Mrs. Evelyn Gasquet, wife of Charles Payne Fenner, be made, and after an adjustment of accounts between plaintiff and said defendants, the plaintiff's share of said Estate to be delivered to him."

(We omit here the prayer for subpoena.)

"And plaintiff further prays for all general and equitable relief to which he may be entitled in the premises."

Defendants, appellees, denied that Gasquet was a citizen of Tennessee, averred that he was a citizen of Louisiana, domiciled in New Orleans, and not *sui juris*, because he had been interdicted by the Court of his domicile in New Orleans in a contradictory proceeding, and the judgment of interdiction had been affirmed by the Supreme Court of Louisiana on the 22nd day of March, 1915, and was in full force and effect, and entitled to full faith and credit under Section 1 of Article IV of the Constitution of the United States.

Defendants admitted that Gasquet and his two sisters were the sole heirs of their mother; that she had divided her estate equally between them, share and share alike, and that Fenner was her executor; they admitted that the debts left by the deceased had been paid; that the estate had been inventoried and was of the value claimed; but averred that the estate had not been fully administered; that the executor's account had not been filed, or been ordered filed by the Probate Court; they denied that the executor owed Gasquet an account and that Gasquet was entitled to delivery of his one-third interest in the residuum of the estate, because the judgment of interdiction having declared Gasquet incapable of taking care of his person and administering his estate, no

account could be rendered to him and no delivery could be made to him, but must be made to a curator appointed by the Court, and the executor of his mother could not render his final account, deliver possession of her property to her heirs or be discharged from his trust as executor, except in contradictory proceedings with the heirs, and these proceedings could not be had until a curator had been appointed to Gasquet according to the laws of Louisiana, contradictorily with whom and with the other heirs such proceedings could be conducted by the executor; and defendants averred that the appointment of a curator had been delayed by Gasquet.

Defendants averred that the effect of the judgment of interdiction under the law of Louisiana was to liken Gasquet to a minor, both as respects his person and estate; to annul all acts done by him from the date of filing the petition for interdiction; to take from him the administration of his property and care of his person, and to place them under the administration and control of a curator appointed by the Court pronouncing the judgment of interdiction.

Defendants challenged the jurisdiction of the District Court on the ground that Gasquet was a citizen of Louisiana and his domicile in New Orleans, and all of the defendants were likewise citizens of Louisiana domiciled in New Orleans; and, in the alternative, denied Gasquet's right or capacity to sue for a partition and delivery, because the property involved in the suit was in the possession and control of the Civil District Court of New Orleans, which alone was seized with jurisdiction and control thereof; and, the property of Gasquet being situated in Louisiana, and having been dealt with and placed in the care of an administrator *pro tempore* by said Court, could not be interfered with, or any other disposition thereof ordered by the United States

District Court sitting in Louisiana, State power and control in such a case being exclusive and unlimited.

The case was heard in the District Court on January 26, 1916. The question of jurisdiction was first heard (Rec., pp. 8 to 26) and on the same day the case was heard on the merits (Rec., pp. 27 to 67) and both jurisdiction and merits taken under advisement the same day, January 26, 1916 (Rec., p. 27).

The decision of the lower Court was rendered on July 21, 1916, the Court filing a written opinion, to be found at pages 67, *et seq.*, of the record.

The decree entered July 24, 1916 (Rec., p. 70) dismissed the bill of complaint

> "without prejudice to plaintiff's right to apply to the Civil District Court of the Parish of Orleans, to set aside the judgment of interdiction and thereafter renew his application to this Court."

It appears from the evidence that suit to interdict Gasquet was brought in the Civil District Court of the Parish of Orleans on the 3rd day of November, 1913 (Rec., pp. 46 to 64); that on November 17, 1913, Gasquet himself represented to the Court:

> "That pending the issue of the petition for interdiction, it is necessary to appoint for the preservation of movables and the administration of the immovable estate of the said Fernand V. Gasquet, administrator *pro tempore*, and that Thomas Gilmore, now acting as agent and attorney in fact of said Fernand V. Gasquet, should be appointed administrator *pro tempore* herein;"

and Gilmore was appointed at Gasquet's request, and qualified, took his oath (Rec., pp. 50 and 51).

Judgment of interdiction was pronounced on June 15, 1914, the decree being as follows (Rec., p. 58):

> "It is ordered, adjudged and decreed that there be judgment in favor of plaintiffs and against defendant, Fernand Vaughan Gasquet, decreeing that said Fernand Vaughan Gasquet is incapable of taking care of his person and administering his estate, and pronouncing his interdiction; costs of this proceeding to be paid out of the estate of said defendant."

(Rec., p. 62.) On June 19, 1914, Gasquet appealed to the Supreme Court of Louisiana, which affirmed the judgment of the lower Court on the 25th day of January, 1915, and refused a rehearing on March 22, 1915 (see opinion and decree, referred to, Rec., p. 9, reported in 136 *Louisiana, pp.* 957 *et seq., a*nd copied in full in the Appendix to this brief).

Gasquet obtained a writ of error from this Court, and the case was brought up to this Court and dismissed for want of jurisdiction on January 8, 1917.

Gasquet v. Lapeyre, 242 *U. S.*, 368 (Justice Van Devanter).

Shortly after the judgment of interdiction had been rendered by the District Court of Louisiana, viz., on the 7th day of July, 1914 (Rec.. p. 32), Gasquet left New Orleans for Gulfport, Miss., and on the 28th day of July, 1915, went from Gulfport to Memphis, Tennessee, for treatment in a sanitorium (Rec., pp. 33 and 34) and, on the 6th day of December, 1915, filed in the Probate Court of Shelby County,

Tennessee, a petition for a writ *inquirendo de lunatico*, in which he set forth the proceedings had against, and by him in Louisiana; the judgment of interdiction; his departure from Louisiana and coming to Memphis; that he had taken up his permanent place of residence and become a citizen of Memphis, and was then "of sound mind and fully capable of exercising control over himself and his property, and does not admit that he was ever otherwise."

The proceeding *de lunatico inquirendo* ended in a judgment which found Gasquet to be a resident of Memphis and citizen of Tennessee, mentioned that a judgment of interdiction had been rendered against Gasquet in Louisiana while he resided there, and found that he was then sound of mind and of sufficient capacity for the government of himself and his property, and "decreed and declared" that:

> "Said Fernand Vaughn Gasquet is a person of sound mind and capable and competent to control himself and his property, and that he is entitled to a settlement from any and all persons having control, charge or management of any part of his estate, real or personal, **any disability of the said Gasquet by reason of the proceedings against him hereinabove mentioned being hereby removed.**"

THE QUESTIONS RAISED BY BOTH SIDES.

Gasquet relied on this proceeding in the Shelby County Court of Tennessee to establish his citizenship of Memphis, soundness of mind, and the repeal of the Louisiana judgment of interdiction. He insists that the judgment of the Tennessee Court is entitled to full faith and credit, and by

virtue thereof the Louisiana judgment of interdiction has been set aside and is no longer in force; that as a citizen of Tennessee, *sui juris*, he has the right to bring suit in the United States District Court sitting in Louisiana; that the particular proceeding instituted by him in that Court is lawful and proper, and that he is entitled to the relief prayed for in his bill of complaint.

Appellees deny that Gasquet had the capacity to acquire a domicile in Tennessee, or to become a citizen thereof; deny that the proceedings taken by Gasquet in the Shelby County Court had any validity in Tennessee, even if Gasquet had the capacity to acquire a domicile in, and citizenship of Tennessee; deny that the proceedings, if authorized by the law of Tennessee, could have any effect outside of Tennessee; deny that the proceedings had in Tennessee could have any effect or bearing upon the Louisiana judgment of interdiction in any event, because the Louisiana judgment was based upon Gasquet's being a morphine addict and drunkard, and the *ex parte* proceeding in Tennessee, being simply a writ *inquirendo de lunatico*, and having no relation whatsoever to alcoholism and addiction to morphine, could not, in any event, affect a judgment of interdiction based upon the abuse of alcohol and morphine, especially as the laws of Tennessee do not permit of interdiction on these grounds; and, finally, deny that a Court of equity has jurisdiction, in any event, of such a proceeding as attempted in this case, or has power to grant the relief sought in this case, the property involved being in the custody of the State Probate Court, and the jurisdiction of the State Probate Court being exclusive and beyond interference.

As the assignments of error, or "specification of errors", set forth in Gasquet's brief (Rec., pp. 23 *et seq.*) diffe[illegible]ome-

what from the assignment of errors filed in the lower Court and fully set forth on pages 74, 75 and 76 of the record, we now copy from the record, the assignment of errors filed as required by law, when the appeal was taken, and will confine ourselves to them, merely stating their substance.

(Rec., p. 74.) **Assignment of Errors**, filed August 14, 1916:

First Assignment of Error. That the judgment of interdiction was not final because of the writ of error from this Court to the Supreme Court of Louisiana.

This is now a moot point, since the writ was dismissed by this Court for want of jurisdiction in the case of *Gasquet v. Lapeyre*, 242 *U. S.*, 367.

Moreover, there is no merit in the point. The only effect of a writ of error with *supersedeas* is to prevent all further proceedings under a judgment, the judgment is not vacated but continues in force until reversed.

Railway Co. v. Twombly, 100 *U. S.*, 78, 81.

The effect of a writ of error is not the same as a suspensive appeal in the State Court.

Slaughterhouse cases, 10 *Wallace*, 373; *State v. Judge*, 33 *An.*, 1381, 1384; *Oregonian Ry. Co. v. Oregon Ry. Co.*, 27 *Fed.*, 277, 282; *In re Kirby*, 84 *Fed.*, 606, 607; *Ransom v. City of Pierre*, 101 *Fed.*, 665, 669; *U. S. v. Mitchell*, 163 *Fed.*, 1014.

Moreover the mandate of the Supreme Court of Louisiana had not been recorded in the State District Court (as set forth in Gasquet's motion, Rec., p. 60), and until the mandate of the Supreme Court had been recorded, the judgment could not be executed under the Louisiana Code of Practice,

Articles 618, 619, 620, *Thomas v. Goodwin*, 120 *La.*, 504. The State Court was, therefore, right in rescinding the order convoking a family meeting to appoint a curator (Rec., p. 61).

But even assuming the mandate properly recorded, the most that could be said would be that the State District Court held that it could not authorize further proceedings under the judgment by the appointment of a curator, pending the writ of error. The judgment, however, fixed the rights of the parties and was in full force for

> "the only effect of a writ of *supersedeas* is to prevent all further proceedings in the subordinate Court except such as are necessary to preserve the rights of the parties."
>
> *Slaughterhouse cases*, 10 *Wallace*, 273, 279, and authorities above quoted.

Under the law of Louisiana, a judgment of interdiction rendered by a State District Court "shall be executed provisionally notwithstanding an appeal" (Civil Code, Article 396), "that is, the interdict is subject to all of the disabilities laid down in the judgment." The only exception being that laid down in Article 404 of the Civil Code, regarding the appointment of a curator.

In re Jones, 116 *Louisiana*, 776, 778.

The Second Assignment of Error: That the lower Court erred in declining to give effect to the judgment of the Court of Appeals of Louisiana, declaring plaintiff sane at a date subsequent to the judgment of interdiction, and pleading Article 1, Section 9 of the Federal Constitution, etc., is disposed of by the decision of this Court in *Gasquet*

v. Lapeyre, 242 *U. S.*, 367, 368, 369, rejecting a similar contention made by Gasquet in the interdiction case.

Third Assignment of Error: That the Court erred in declining to give effect to the judgment of the Probate Court of Shelby County, Tennessee, for which Gasquet invokes the full faith and credit clause of the Federal Constitution.

Some of the laws of Tennessee, where the judgment was rendered, have been offered in evidence and are copied in the transcript, pages 10 to 15.

The Probate Court of Shelby County is given concurrent jurisdiction with the Chancery Courts of Shelby County over the persons and estates of idiots, lunatics and other persons of unsound mind (Rec., p. 12) and all of the jurisdiction of the County Court (Rec., p. 11).

Chapter No. 149 of the Acts of the Forty-fifth General Assembly of Tennessee (Rec., p. 13) is entitled:

> "An act conferring jurisdiction on the County Court to declare persons who have been declared lunatics, or of unsound mind, of sound mind, and to restore to them control of their property."

Section 1 of this act (Rec., p. 13) provides:

> "That when any person shall be declared a lunatic or person of unsound mind, **as now provided by law,** and afterwards shall become restored **in mind,** such person"

may petition the County Court for the summoning of a jury to ascertain by inquisition the condition of such person's mind.

(Rec., p. 14.) Section 5 provides that if the applicant be declared a **lunatic,** the costs shall be paid out of his estate.

(Rec., p. 14.) Section 6. That upon the return of the jury that

> "the said person is of **sound mind** and competent to control himself and his property, the Court shall pronounce a decree declaring such person of **sound mind;** and **the guardianship of such person, if any exist, shall terminate, and he may demand settlement of his guardian.**"

(Rec., p. 14.) Section 9:

> "The application provided for herein may be made **in any county,** where the applicant may reside, **or where his property or guardianship may be.**"

It is manifest from a casual reading of these statutes that Tennessee, like all States which provide for the commitment or interdiction of insane persons, provides also some method of setting aside the judgment of commitment when sanity is recovered.

(a) The statutes of Tennessee offered in evidence by Gasquet show plainly on their face that they are intended to provide, and solely to provide, a method by which a Tennessee judgment of commitment may be set aside, Tennessee guardians may be compelled to account, and property located in Tennessee may be delivered to citizens of Tennessee who, having been committed for insanity by a Tennessee Court, have been subsequently adjudged sane by the Courts of Tennessee.

The statutes of Tennessee were not intended to provide, and do not provide for such an extraordinary *ex parte* proceeding as attempted in this case, to test the sanity of a man who has not been adjudged insane by a Tennessee Court. The words of the Tennessee statutes which have been italicized by us make this plain; the title of the statute (Rec., p. 13) confers jurisdiction on the County Court "to restore control of their property" to lunatics who have been declared of sound mind—a jurisdiction necessarily confined to property situated in Tennessee. Section 1 of the Statute (Rec., p. 13) speaks of a person who has been declared a lunatic "as now provided by law"—necessarily by the law of Tennessee; Section 6 of the statute provides that the guardianship of the lunatic "shall terminate, and he may demand settlement of his guardian"—necessarily a guardian appointed by and under the control of a Tennessee Court, since Tennessee can exercise control over none other. Section 9 (Rec., p. 14) provides that the application for restoration to sanity may be made in any county where the applicant resides, "or where the property or guardianship may be," thus emphasizing that the statute is confined to proceedings to liberate and restore persons adjudged insane by the Courts of Tennessee, whose property is in Tennessee.

To give the statute the range claimed for it in this case is not only to do violence to its plain language, but to eliminate part of the language of the statute as not apposite.

That we are correct in this interpretation of the intent, purpose, and scope of the Tennessee law is proven by the language of the judgment which is evidently the usual form of judgment adopted by the Tennessee Courts. This judgment (Rec., pp. 20, 21) recites the proceedings in, and the

judgment of the Louisiana Court interdicting Gasquet, and proceeds to decree "any disability of the said Gasquet by reason of the proceedings against him hereinbefore mentioned **being hereby removed**", and gives him the right to exact settlement from any and all persons having control, charge or management of any part of his estate, real or personal.

To carry out the statute of Tennessee it is, of course, necessary that the judgment of commitment by a Tennessee Court be mentioned in the judgment setting it aside, and that the person restored to sanity be authorized to receive an accounting from the Tennessee guardians, but the Courts of Tennessee cannot set aside a judgment of a sister State, or command an accounting by an officer appointed by the Courts of a sister State.

(b) The proceedings had by Gasquet in the Probate Court of Shelby County, Tennessee, even if authorized by the laws of Tennessee, can have no effect outside of Tennessee.

The case of *Chaloner v. Sherman*, 242 *U. S.*, 455, decided by this Court at the last term is singularly like this case.

Chaloner was interdicted in New York, went to Virginia, his domicile of origin, brought an *ex parte* proceeding in a West Virginia Court to test his sanity, obtained a judgment declaring him sane, and brought suit in the Federal Court in New York against Sherman, appointed his committee by the New York Court, to recover damages for wrongful withholding of his property. He relied on the judgment of the Virginia Court, and Sherman plead in justification the judgment of the New York Court.

This Court held that the New York Court had jurisdiction when it rendered the judgment of interdiction, that the

judgment, therefore, was not void and not subject to collateral attack, and that if "owing to a change in plaintiff's condition, a committee is no longer required, the remedy must be sought by a direct proceeding to that end", and this proceeding must be had in the New York Court.

Gasquet relies on the Tennessee judgment, rendered after the Louisiana judgment, and pleads the full faith and credit clause of the Federal Constitution in support thereof. Chaloner relied on the Virginia judgment, rendered after the New York judgment, and also plead the full faith and credit clause of the Constitution in support of that judgment.

True, the *Chaloner case* was an action of trover seeking merely damages for wrongful withholding of Chaloner's property, and the existing orders of the New York Court constituted a complete defense, but Chaloner insisted that the Virginia Court had jurisdiction to declare his status, that its judgment was entitled to full faith and credit, establish his sanity and right to control his person and property, entitled him to a delivery thereof from Sherman on demand, and had the effect of setting aside the New York judgment; and this Court passed upon, and decided the contention adversely to him, citing with approval the case of *Curtiss*, 199 *N. Y.*, 36, which is very instructive.

In the *Curtiss case*, Mrs. Curtiss, who had been interdicted in Connecticut and brought into New York with the consent of her guardian, claimed to have obtained a domicile in New York, and instituted in the Courts of New York an *ex parte* proceeding precisely similar to the proceeding instituted by Gasquet in Tennessee.

The case is reported under the title *In re Curtiss*, 122 *N. Y. Supplement*, 468. Mrs. Curtiss set up the proceed-

ings had against her in Connecticut, denied that she had ever been incompetent before or since the proceedings were instituted against her in Connecticut, and claimed that she was then in every respect competent to manage and control both her person and property. She prayed for the reversal of an order which had been previously entered by the New York Court, recognizing the conservators appointed by the Connecticut Court and asked that they be discharged and she be restored to the full enjoyment of her person and property.

The lower New York Court, on her prayer, issued an order directing a writ *de lunatico inquirendo*, an appeal was taken therefrom and the order was reversed. The Appellate Division of the Supreme Court of New York said (122 *N. Y. Sup.*, 471) that the Connecticut Court having jurisdiction over Mrs. Curtiss

> "its order is entitled to full faith and credit, and is not to be attacked in a collateral proceeding in the Courts of this State."
>
> * * * * * * * * *
>
> "The respect due to the decrees of the Courts of a sister State, as well as to our own previous decision, requires this Court to refuse to inquire whether that Court was right, or wrong, in its original determination that Mrs. Curtiss was incompetent, and to require her to try out the question as to whether her condition has so changed as to entitle her to be restored to the possession of her property and the control of her person by direct proceedings in the Courts of Connecticut. The laws of that State provide sufficient methods of review."

Mrs. Curtiss then appealed to the Court of Appeals of New York, and the case is reported *in re Curtiss*, 199 *N. Y.*,

36, 92 *N. E. Rep.*, 396, in which the Court held that the law of New York did not authorize the proceeding attempted in which Mrs. Curtiss asked for a jury to be summoned to inquire into her sanity; that a proceeding of that character was only authorized when a person's sanity was attacked, and that a different method was prescribed when a person sought to be relieved from a judgment of insanity, and an order terminating the committee of his person and property.

(92 *N. E. Rep.*, 397.) The Court of Appeals said:

> "We thus far have discussed the question upon the assumption that the petitioner had her domicile in, and was a resident of this State. But as we have seen it was adjudged in the Connecticut Court that she had her domicile in and was a resident of that State."

The Court then discussed the question whether Mrs. Curtiss had acquired a domicile in New York under the circumstances of her case, and decided that she had not, as she had been brought into the State temporarily by her conservators by leave of the Connecticut Court. It approved the decision of the Appellate Division holding that the judgment of the Connecticut Court was entitled to full faith and credit, and that Mrs. Curtiss should apply to the Connecticut Court for relief. It said (92 *N. E. Rep.*, 398):

> "While the committee of an incompetent and the guardian of an infant may consent to and establish a residence for such incompetent and infant in another place, we do not understand that the incompetent can establish a domicile other than that which existed at the time his incompetency was adjudged."

It is conceded that the Civil District Court of New Orleans which interdicted Gasquet had full jurisdiction over his person and property at the time it pronounced the judgment.

Article 400 of the Civil Code of Louisiana says:

> "The interdiction takes place from the day of presenting the petition for the same."

Article 401:

> "All acts done by the persons interdicted from the date of filing the petition for interdiction until the same is pronounced are null."

Article 415:

> "The person interdicted is, in every respect, like the minor who is under a tutor, both as respects his person and estate; and the rules respecting the tutorship of the minor, concerning the oath, the inventory and security, the recording of the legal mortgage, the mode of administering, the sale of the estate, the commission on the revenues, the excuses, the exclusion or deprivation of the tutorship, the mode of rendering the accounts, and the other obligations apply with respect to the curatorship of the person interdicted."

Article 423:

> "The person interdicted cannot be taken out of the State without a judicial order, given on the recommendation of a family meeting and on the opinion delivered under oath of at least two physicians that they believe the departure necessary to the health of the person interdicted."

Article 420:

> "Interdiction ends with the causes which gave rise to it. Nevertheless, the person interdicted cannot resume the exercise of his rights, until after the definitive judgment by which the repeal of the interdiction is pronounced."

Article 421:

> "Interdiction can only be revoked by the same solemnities which were observed pronouncing it."

As the Louisiana judgment of interdiction of Gasquet dates back to the date of filing of the suit for his interdiction under Article 400 of the Civil Code quoted above, and as the effect of that judgment was to liken him to a minor both as respects his person and estate, under Article 415 of the Civil Code quoted above, Gasquet, like any minor, lacked capacity to change his domicile from Louisiana to Tennessee, and acquire citizenship there—certainly as regards his property in Louisiana or any appearance in the Courts of Louisiana, State or Federal, or any rights in Louisiana.

Insofar as concerns Louisiana law and Louisiana Courts, including Federal Courts sitting in Louisiana, Gasquet's domicile has never been changed from New Orleans, his domicile of origin, because neither he nor anyone else could change it after the filing of the petition for interdiction, ripened by the judgment

When Gasquet left Louisiana a few days after the judgment of interdiction had been rendered by the Louisiana District Court, and sought to remove his domicile therefrom, he took the chance of a favorable decision by the Su-

preme Court of Louisiana. Had that Court reversed the judgment of interdiction, his attempted change of domicile would have been effective; the judgment having been affirmed, the ban of the statute applies, and like a minor he lacked capacity to change his domicile and acquire citizenship elsewhere.

Succ. of Robert, 2 *Rob.*, 427; *Prieto v. Convent, etc.*, 52 *La. An.*, 631.

As to the State of Louisiana, certainly Gasquet's legal domicile is in the City of New Orleans because that was his domicile when the suit for interdiction was instituted, and because New Orleans is the domicile of the curator appointed to him by the State District Court since the dismissal of the writ of error in *Gasquet v. Lapeyre*, 242 *U. S.*, 367.

The full faith and credit clause does not require the acceptance of the judgment of another State without investigation or inquiry, nor the acceptance of its recitals as facts,

Simmons v. Saul, 138 *U. S.*, 439; *Thompson v. Whitman*, 18 *Wallace*, 457; *Andrews v. Andrews*, 188 *U. S.*, 14; *Wisconsin v. Pelican Insurance Co.*, 127 *U. S.*, 265; *Tilt v. Kelsey*, 207 *U. S.*, 43, 51, 59.

> "It is thoroughly settled that the Constitutional provision of full faith and credit shall be given in each State to the judicial proceedings of other States, does not preclude inquiry into the jurisdiction of the Court in which the judgment is rendered over the subject-matter, or the parties affected by it, or into the facts necessary to give jurisdiction."
>
> *Thorman v. Frame*, 176 *U. S.*, 350, 356.

The Court "did possess the power to conclusively bind all the world as to the fact of domicile by a mere finding of such fact in a proceeding *in rem.*"

Overby v. Gordon, 177 *U. S.,* 214, 227.

Questions of status such as the marriage tie, interdiction, minority, etc., are entirely within the jurisdiction and power of a State which decides those questions according to its own views of public policy, and it is not bound to give effect to the decisions of the Courts of other States therein, under the full faith and credit clause, and may enforce them or not as matter of comity.

Haddock v. Haddock, 201 *U. S.,* 562.

The State of Louisiana had full jurisdiction over the person and property of Gasquet, and his property is still within its borders. While he was here, the State, in the exercise of its power, declared him incapable of taking care of his person and property, and declared his status to be that of a minor subject to all the disabilities of minority, one of which is that he lacked capacity to acquire another domicile. Such a judgment was valid and is entitled to full faith and credit under the Constitution and cannot be questioned. It can be set aside only in the State of Louisiana and in the manner pointed out by its laws. No other State can give to Gasquet in Louisiana a status which is denied to him by its own Courts.

The consequences of such a doctrine as contended for by Gasquet would indeed be startling. A dangerous lunatic, sane on all subjects except one, but violent and dangerous on that one, who is adjudged and committed, may escape, go into another State, acquire a domicile there, submit to

the Courts of the State of his choice the general question of his sanity, and, having triumphantly stood the test and secured a decree of sanity because no one knew anything about his peculiar hallucination, could return to Louisiana armed with that judgment, and if restrained of his liberty under the old judgment of commitment, plead the full faith and credit clause and be set at liberty, though a dangerous lunatic to the knowledge of all.

The judgment which Gasquet obtained in the Shelby County Court has no force as a judgment in Louisiana, until made a judgment of Louisiana by suit thereon in the Courts of Louisiana. So long as the judgment of interdiction in Louisiana had not been set aside by proceedings in Louisiana, recognizing the Tennessee judgment and avoiding the Lousiana judgment, the Tennessee judgment did not carry with it into Louisiana the efficiency of a judgment on property or persons which could be enforced. It must be made a judgment of Louisiana to be executed as its laws permit. *McElmoyle v. Cohen*, 13 *Peters*, 312, 325. Until the Louisiana judgment had been set aside it was, and is entitled to full faith and credit in the Federal Court.

(c) The proceedings had in Tennessee can, in no event, have any effect or bearing upon the Louisiana judgment of interdiction because the Louisiana judgment was based upon Gasquet's being a morphine addict and drunkard, and the *ex parte* proceeding in Tennessee, being simply a writ *de lunatico inquirendo*, and having no relation whatsoever to alcoholism or addiction to morphine, could not affect a judgment of interdiction based upon abuse of alcohol and morphine, especially as the laws of Tennessee do not allow of interdiction on these grounds. Tennessee, unlike Lou-

isiana and New York, but like many other States authorizes interdiction only on the ground of insanity.

The laws of Tennessee on the subject are found in *Shannon's Code of Tennessee, Sections* 5451 to 5499 inclusive. *Edition of* 1896, *pp.* 1378 to 1384, of which this Court will take judicial notice, and which we copy in the appendix to this brief.

The law of Louisiana, however, allows of interdiction for alcoholism and addiction to morphine, and the opinion of the Supreme Court of Louisiana, 136 *La.*, 957 (copied in the appendix to this brief) shows that he was interdicted on these grounds.

The records of the proceedings in the Shelby County Court are barren of any reference to alcoholism or the morphine habit, and the laws of Tennessee are equally barren of any authority to interdict on such grounds.

The judgment of the Tennessee Court, therefore, cannot avail Gasquet even though we were to concede to it the full faith and credit claimed by him. The law of Louisiana affords him a complete and adequate remedy in Article 420 of its Civil Code, which provides that "interdiction ends with the causes which gave rise to it", and requires "a judgment by which the repeal has been pronounced". Gasquet must come to Louisiana and there make proof that he has fully recovered from "the causes which gave rise to his interdiction", which are fully described in the judgment of the Supreme Court of Louisiana, and beyond the scope of the investigation in and judgment of the Tennessee Court.

The statutes of Tennessee, like the articles of the Civil Code of Louisiana, are to be read as a whole—they evidence a complete and well thought out system dealing with the

subject of interdiction, providing: 1st for an inquisition, 2nd for the appointment of a guardian, and 3rd for setting aside the judgment of interdiction rendered on the inquisition. They interlock and form one complete and harmonious whole like similar statutes of other States of the United States.

See *Ayers v. Mustetter*, 46 *Ill.*, 469.

The language of the statutes providing for setting aside the judgment of interdiction, and discharge and accounting of guardian, refer, and can refer only to the judgment pronounced under the provisions of the statute and to the guardian appointed under the statutes, and the language of Chapter 149, invoked by Gasquet (Rec., p. 13) plainly says so in Section 1, which provides for proceedings for restoration to be instituted by any person "declared a lunatic, or person of unsound mind, as now provided by law", via. as provided by law cited from *Shannon's Code of Tennessee*, quoted in the appendix.

In a nutshell, Gasquet's claim is that although he could only have the judgment of interdiction set aside in the Courts of Louisiana by a proceeding in the Court which interdicted him, based upon proof that he was no longer an alcoholic or morphine addict, he can, in the Courts of another State, by virtue of the full faith and credit clause of the Constitution, set aside the judgment of interdiction on general proof of sanity without mention of or proof of recovery from the infirmities which caused his interdiction.

The mere statement of the proposition is its own refutation.

Fourth Assignment of Error: The Court declined to enforce Article 4, Sec. 2 of the Constitution of the United

States, securing to the citizens of each State all privileges and immunities of citizens in the several States.

No privileges are secured to citizens in the several States by the first clause of Section 2, Article 4 of the Constitution, except those fundamental rights which belong to citizenship.

Conner v. Elliott, 18 *Howard*, 591; *Leisy v. Hardin*, 135 *U. S.*, 100, 130; *Blake v. M. Lung*, 172 *U. S.*, 246; *Corfield v. Corryell*, 4 *Wash.*, 371, 380.

"The constitutional provision did not create those rights which it called privileges and immunities of citizens of the States * * * Its sole purpose was to declare to the several States that whatever those rights, as you grant or establish them to your own citizens, or as you limit or qualify, or impose restriction on the exercise, the same neither more nor less, shall be the measure of the rights of citizens of other States within your jurisdiction."

The Slaughterhouse cases, 16 *Wallace*, 36, 77, quoted approvingly in *Blake v. M. Lung*, 172 *U. S.*, 239, 252.

A State is not required to give to citizens of another State any higher privileges than those given to its own citizens, and a foreign citizen is not entitled to have enforced in the Courts of the State all the rights of whatever kind which he might be possessed of under the laws of the State where he resides.

Reynolds v. Geory, 26 *Conn.*, 183; *Paul v. Virginia*, 8 *Wallace*, 168, 180.

The complaint in this case is not that Gasquet, in contravention of this constitutional provision, is being denied equal treatment with a citizen of Louisiana, but that he is not being accorded privileges and rights greater than a citizen of Louisiana. The interpretation placed upon this constitutional provision by Gasquet is novel and startling.

Fifth Assignment of Error: That the Federal District Court as a Court of equity has jurisdiction of this proceeding, and power to grant the relief sought.

The case of *Waterman v. Canal Bank*, 215 *U. S.*, 41, and other cases cited in Gasquet's brief are decisive against him.

It was held in that case that the Federal Courts had the right to exercise jurisdiction in favor of creditors, legatees and heirs of an estate to establish their claims and have a proper execution of the trust as to them, but that while a debt could be established against an estate, it must take its place and share of the estate as administered by the Probate Court, and that while a distributee might establish his right, when questioned, to a share of the estate he could not in any manner disturb the possession of the property by the State Courts. That it had been decided that Federal Courts could entertain jurisdiction in favor of citizens of other States to determine and award by decrees binding *in personam* their shares in the estate, but that the Federal Courts could not exercise original jurisdiction to draw to themselves the entire settlement of the estate of a decedent and accounts of administration, or the power to determine all claims against the estate.

It held that the Federal Court had jurisdiction to determine as between the parties before the Court, Mrs. Waterman's interest in the alleged lapsed legacy and residuary estate, but that the decree could not interfere with the possession of the estate in the hands of the executor while being administered in the Probate Court, but would be binding on the executor *in personam*, and could be enforced against his property.

The answer filed by the defendant executor and Gasquet's coheirs shows that there exists no controversy over which the Federal Court can exercise jurisdiction as in the *Waterman case*. Gasquet's interest in his mother's estate is admitted both by the executor and his coheirs; there is absolutely no dispute or controversy with reference thereto; all that remains to be done to enable Gasquet to obtain possession of his share of the estate, if he be entitled to such possession, or to allow the executor to deliver possession of Gasquet's share to his lawful representative is for the executor to account to the State Court and heirs and deliver to them the possession of the property vested in him by the will of Mrs. Louise L. Gasquet, and this the executor is ready and anxious to do, but is prevented from doing by Gasquet's litigation. See answer of defendants, Rec., pp. 5 *et seq.*, and executor's testimony, Rec., p. 10.

The only purpose of this suit is to usurp the jurisdiction of the State Court and compel an accounting, partition, and delivery of the estate in the Federal Court, because Gasquet has blocked proceedings in the State Court and made it impossible for the executor to account, deliver possession to the heirs and get his discharge.

Under the laws of Louisiana, an executor appointed by will and given seizin of the estate, as in the case of Mrs. Gasquet, is vested with possession of the whole of the property of the estate, real, personal and mixed; (Revised Civil Code, Articles 1659 and 1660), he is charged with the payment of debts and delivery of legacies; he can sell all kinds of property for that purpose, but cannot otherwise sell real property unless authorized by the will to do so (R. C. C., 1668, 1669, 1670), and having paid debts and discharged legacies must surrender the property of the estate to the heirs who can then partition it amongst themselves either amicably or by judicial proceedings; the executor has nothing to do with the partition of the property (R. C. C., 1292, 1293, *et seq.*).

The executor cannot be discharged until he has rendered his account to the Probate Court contradictorily with the heirs. This is fully dealt with in the *Succession of Conrad*, 45 *Louisiana Annual*, 89. At page 94 the Court says:

> "When an executor or administrator files such a final account purporting a settlement with the heirs of the estate and a distribution among them of the net assets of the succession which remain in his hands after debts are paid, personal notice of the filing thereof must be given to the heirs; otherwise a judgment homologating it would be of no avail."

Durham v. Williams, 32 *Annual*, 968, 972:

> "A citation was necessary to fasten upon the heirs the consequences of the homologation of the account. It is useless to quote authorities on this point."
>
> See also *Landry v. Landry*, 105 *La.*, 362, 368, *Miguel v. Delcambre*, 109 *La.*, 1090.

A testamentary executor is bound to see the testament faithfully executed, and continues in office until the estate is finally wound up, and:

> "An executor who receives the seizin of an estate thereby assumes the obligations not only of paying the debts and discharging the legacies but of thereafter delivering the residue of the estate to the heirs and to no one else, and it is only when no seizin is given that under R. C. C., Article 1660, his functions are limited as proved in that article."
>
> *Succession of Serres*, 135 *La.*, 1005.

Fenner, executor, cannot, therefore, account, surrender the property of Mrs. Gasquet to her heirs and get his discharge except in contradictory proceedings with the heirs, and he has been unable to take these contradictory proceedings because Gasquet, having been interdicted, could not appear in Court except through a curator, and because Gasquet has resisted the appointment of a curator who can alone represent Gasquet under the laws of Louisiana.

The Federal Court had nothing before it upon which it could adjudicate. All of the rights claimed by Gasquet in his mother's estate were conceded, but he could not secure an accounting from her executor in the Probate Court, or obtain possession because he could not be cited into Court by the executor, and a curator could not be appointed to represent him because of his opposition.

A settlement of the estate of Gasquet's mother would long ago have been made had the executor had any person with whom he could deal on behalf of Gasquet who, therefore, is complaining of a state of affairs created by himself and asking the Federal Court to compel the executor to do what

the executor has no power to do under the law of Louisiana.

We respectfully submit that the judgment of the District Court was correct and that it should be affirmed.

Respectfully,

GEO. DENEGRE,

VICTOR LEOVY,

HENRY H. CHAFFE.

March 18, 1918.

APPENDIX.

Shannon's Code of Tennessee

Sections 5451 to 5499 Inclusive, Edition of 1896, pp. 1378 to 1384.

Chapter 18.

Article I.

Inquisition of Unsoundness of Mind in the County Court.

5451 (3681) 4430. **Jurisdiction.**—Jurisdiction over the persons and estate of idiots, lunatics, and other persons of unsound mind, is intrusted to the county and chancery courts. (1797, ch. 41; 1851—52, ch. 163.)

See sec. 5462.

5452 (3682) 4431. **Inquisition.**—Upon information made to the county court that any idiot or lunatic residing within the jurisdiction thereof, the court shall order the sheriff to summon a jury of twelve freeholders to ascertain, by inquisition, the idiocy or lunacy, and the property and estate of the idiot or lunatic, and make return thereof to the court at that or the next succeeding term. (1797, ch. 41, sec. 1; 1851—52 ch. 163, sec. 2.)

5453 (3683) 4432. **Form of Writ.**—The following may be the form of the writ:

State of Tennessee,)

) To the sheriff of .... county....

.....County.) Greeting:

You are hereby commanded to inquire, by the oath of twelve freeholders, summoned by yourself, whether .....

of ....., in the county of ....., is an idiot or lunatic, or is otherwise of unsound mind, so that he has not capacity sufficient for the government of himself and his property, and, if so, from what time, after what manner, and how; and if the said ..... being in the same condition, hath alienated any lands or tenements or not, and, if so, what lands and what tenements, to what person or persons, where when, and after what manner, and how, and what lands and tenements, goods and chattels, yet remain to him; how much they are worth by the year; whether he has a wife and children, and their names and ages. And you are further commanded that at certain days and places, appointed by yourself, you diligently make inquisition in the premises; and the same, distinctly and plainly made, return into the county Court of said county at its next session, together with this writ.

Witness, ..., clerk of said Court, at office in ....., the ..... day of ....., 18...

5454 (3684) 4433. **Returnable to same term.**—The writ of inquisition may be returnable to the same term of the Court from which it issues, if the Court so directs, and in such case the same proceedings shall be had as if the return were made to the next succeeding term. (1827, ch. 32, sec. 1.)

5455 (3685) 4434. **Witnesses.**—The clerk of the county court, or any justice of the peace, may, on the application of either party, issue subpoena for witnesses to attend the inquisition, and such witnesses are subject to the penalties and entitled to the privileges of other witnesses. (1851—52, ch. 163, sec. 4.)

5456 (3686) 4435. **Costs.**—The person on whose application the inquisition issued is liable for costs in case the defendant is not declared a lunatic; and, if so declared, the costs shall be paid out of the lunatic's estate.

5457 (3687) 4436. **Guardian.**—Upon the return of the jury that the person is an idiot or lunatic, and that he has property, the Court shall appoint a guardian for the person and property of such idiot or lunatic, who shall give bond and account as other guardians. (1797, ch. 41, sec. 1.)

5458 (3688) 4437. **Provision if no property.**—If the idiot or lunatic has no property or not sufficient for his maintenance, he may be let out for the term of one year to the lowest bidder, as other poor persons, or otherwise provided for as the Court may direct. (Id., sec. 2.)

5459 (3689) 4438. **Bond required.**—If let out to the lowest bidder, bond and sufficient security, to be approved by the Court, shall be taken for the safe keeping, providing with sufficient diet, washing, and apparel, and proper treatment for the term of letting. (Ib.)

5460 (3690) 4439. **Commitment.**—Any justice of the peace, in the recess of court, if satisfied from the finding of a jury, or otherwise, that there is apparent danger of violence being offered by such idiot or lunatic to the person or property of others, may commit him to jail until the next term of the Court. (Ib.)

Article II.

Inquisition of Unsoundness of Mind in the Chancery Court.

5461 (3691) 4440. **Application to Chancery Court.**—The application to the chancery court shall be by petition, verified by affidavit, setting forth the facts in regard to the person and property of the supposed idiot or lunatic. (1851—52, ch. 163, sec. 2.)

5462 (3692) 4441. **Estate exceeds five hundred dollars.**—No application shall be made to the chancery court, unless the estate exceeds five hundred dollars, and the fact shall be so stated in the petition.

See sec. 5451.

5463 (3693) 4442. **Chancellor to order inquisition.**—Upon this petition, the chancellor shall direct the clerk to issue a writ of inquisition, on the petitioner giving bond with good security in a sum to be fixed by the chancellor, conditioned to pay costs, and all such damages as the defendant may sustain in consequent of the petition having been wantonly and maliciously filed and prosecuted. (1851—52, ch. 163, sec. 2.)

5464 (3694) 4443. **By twelve freeholders.**—The writ directs the sheriff to summon a jury of twelve freeholders, to meet at a day and place to be designated by him, to inquire and ascertain by their verdict whether the defendant be an idiot, a lunatic, or person of unsound mind. (Ib.)

5465 (3695) 4444. **Notice to defendant.**—The clerk and master shal cause the defendant to be served with a copy of the petition, and notice of the time and place of

holding the inquest, at least five days previous thereto. (Id., sec. 3.)

5466 (3696) 4445. **Clerk and master or deputy to be present.**—The clerk and master, or a deputy by him appointed, shall be present and preside over the deliberations of said jury, and receive their verdict. (Id., sec. 4.)

5467 (3697) 4446. **Witnesses; examination of defendant.**—Both parties shall have process of subpoena, and attachment if necessary, to be issued by the clerk, to compel the attendance of witnesses; and the jury shall hear the testimony offered, and inspect and examine the defendant himself, in making a verdict. (Ib.)

5468 (3698) 4447. **Evidence reduced to writing.**—The testimony of the witnesses, and examination of the defendant, if made, shall be taken down by the clerk, in writing, and returned, with the verdict, to the chancellor in court. (Id., sec. 5.)

5469 (3699) 4448. **Finding of jury.**—If the jury find the defendant to be an idiot, lunatic, or person of unsound mind, they shall ascertain, by their verdict, the value of his estate, and of what it consists, and who would be his heirs and next of kin, were he to die intestate. (Id., sec. 6.)

5470 (3700) 4449. **Guardian.**—Upon such finding by the jury, the clerk will appoint a guardian to take care of the defendant and manage his estate until the next term of the chancery court, at which time the Court will appoint a regular guardian, as hereinabove provided. (Id., sec. 7.)

5471 (3701) 4450. **New writ.**—If the jury cannot agree, the clerk may issue a new writ to the sheriff, who

shall summons twelve other freeholders, before whom the matter shall be again tried.

5472 (3702) 4451. **Evidence to be submitted to chancellor, when.**—In case the second jury do not agree, the evidence on both trials will be returned to Court, and submitted to the chancellor.

5473 (3703) 4452. **Motion to set aside inquisition.**—Either party may appear at the first term of the court after the return of the inquisition, and move the Court to set it aside. (1851)—52 ch. 163, sec. 8.)

5474 (3704) 4453. **Hearing.**—Upon this motion, the Court shall hear the evidence and the examination of the defendant, as taken down and returned by the clerk and master, and also other affidavits as may be competent and proper; and the chancellor may, upon such motion, grant or refuse a new trial. (Ib.)

5475 (3705) 4454. **Decree.**—Upon setting aside the verdict of the jury, the chancellor may, at his discretion, order another inquest to be held, or decree upon the facts. (Id., sec. 9.)

5476 (3706) 4455. **Discretion of court.**—In like manner, when a jury fails to agree, the chancellor may order a new inquisition, or decide the case for himself upon the testimony returned, and such other testimony as may be offered.

5477 (3707) 4456. **May compel defendant's presence.**—The court may make such order for the purpose of having the defendant present for inspection and examination by him as he may think proper.

Article III.

Proceedings in Relation to the Property of Persons of Unsound Mind.

5478 (3708) 4457. **Guardian may provide for children.**—The guardian appointed under this chapter is authorized, upon the coming of age or marriage of any child of the lunatic, in case of long standing, or confirmed mental unsoundness, to make such settlement or provision for such child as the situation of the estate, the age and condition of the lunatic and his wife, if any, and the number of his children, and other circumstances, may render reasonable and just; and the guardian and his sureties are liable on his bond for any intentional fraudulent abuses by them committed. (1824, ch. 2, secs. 1, 2.)

5479 (3709) 4458. **May apply to chancery court for direction.**—To avoid which risk, the guardian himself, or the child coming of age or marrying, may file a bill in the chancery court of the county in which either the guardian or the lunatic resides, making all necessary parties, and proceed as in other chancery cases. (Id., sec. 3; 1851—52, ch. 57, sec. 1.)

5480 (3710) 4459. **Court may decree division of estate.**—The court may, in such cases, decree the partition and divisions of a reasonable portion of the real and personal estate of the persons laboring under confirmed mental unsoundness among his children or descendants, as in case of death and intestacy, charging such portion as an advancement. (1851—52, ch. 57, sec. 2.)

5481 (3711) 4460. **If satisfied of what.**—The court shall, before making such a decree, be fully satisfied:

(1) That there is in existence no last will or testament that might be valid after the death of such person of unsound mind. (Ib.)

(2) That it is manifestly for the interest of such person of unsound mind, and his family, that the partition and division should be made. (Ib.)

5482 (3712) 4461. **Court shall see what.**—And the court shall see:

(1) That ample means are retained, undivided, for the support, maintenance, care and comfort of such person. (Ib.)

(2) If he is married, that the like ample means are retained for the support, maintenance, care, and comfort of his wife, and to provide her year's support, dower, and distributive share in case she survives him. (Ib.)

5483 (3713) 4462. **Refunding bond to be taken.**—Upon rendering a decree for partition and distribution as aforesaid, the court shall take bond and security from the person to whom such partition or distribution is made, in a sufficient penalty, payable to the State of Tennessee, conditioned, if it should become necessary, to refund the property so assigned to him, as and when ordered by the court, and to perform whatever orders or decrees the court may make touching the property so partitioned or distributed to him. (Id., sec. 5.)

5484 (3714) 4463. **For minor to be given by guardian.**—If any party to whom such partition or distribution has been made is a minor, the refunding bond shall be given by his guardian. (Ib.)

5485 (3715) 4464. **Cause continued in Court.**—The court may, at any time during the life of the idiot, lunatic, or person of unsound mind, or after his death, make orders in the cause till the refunding bonds have been complied with.

5486 (3716) 4465. **Sale of property.**—Upon the petition of the guardian of an idiot or lunatic or person of unsound mind, the chancery court may, if it appear manifestly for the interest of the idiot or lunatic, decree the sale of his property, real or personal. (Id., sec. 1.)

5487 (3717) 4466. **Court to dispose of proceeds.**—The court shall dispose of the proceeds of such sale by reinvestment or otherwise, as shall, in its opinion be most for the interest of the owner. (Ib.)

5488 (3718) 4467. **Bond from applicant for sale.**—The court shall take from the person on whose application the sale is made, bond, with security in a penalty double the amount of such proceeds, payable to the State of Tennessee, conditioned to perform the decree of the court, and whatever orders the court may make touching said proceeds. (Id., sec. 4.)

5489 (3719) 4468. **Sale and reinvestment, when.**—The chancery court is also vested with power, upon application by guardian, to sell and reinvest any portion of the lunatic's property, real or personal, where it is manifestly for the interest of such lunatic and family. (Id., sec. 1.)

5490, 4469. **Liability of guardian.**—Guardians of lunatics, of idiots, or of other persons of unsound mind, shall be prosecuted and indicted for the same abuses, misman-

agements, neglects, failures, and other offenses, for which guardians of minors are presentable and indictable by law, and, on conviction, shall be punished in the same manner. (1871, ch., 113.)

See sec. 5077.

Article IV.

Those Declared Lunatics May be Declared of Sound Mind.

5491. **May apply to county court, when.**—When any person shall be declared a lunatic, or person of unsound mind, as provided by law, and afterwards shall become restored in mind, such person, upon the written certificate of two respectable (reputable) physicians that he or she is a person of sound mind, may make application by petition to the county court, and the court shall order the sheriff forthwith to summon a jury of twelve freeholders or householders, to ascertain, by inquisition, the condition of such person's mind and make return thereof to the court at that or the succeeding term. (1887, ch., 149, sec. 1.)

5492. **Form of writ.**—The writ issued to the sheriff may be in the following form:

State of Tennessee)
) To the sheriff of ..... county ..
.....County.) Greeting:

You are hereby commanded to inquire, by the oath of twelve freeholders or householders, summoned by yourself, whether ..... of ....., in the county of ....., is a

lunatic or person of unsound mind, so that he has not capacity sufficient for the government of himself and his property. And you are further commanded that, at certain days and places appointed by yourself, you diligently make application in the premises; and the same, distinctly and plainly made, return to the county court of said county at its next session, together with the writ. Witness ....., clerk of said court, at office, the ..... day of ..... 18... (Id., sec. 2.)

5493. **When returnable.**—The writ may be returnable to the same term of the court from which it issues, if the court so direct; and in such case the same proceedings shall he had as if the return were made to the next succeeding term. (Id., sec. 3.)

5494. **Witnesses, penalties, privileges, and compensation.**—The clerk of the county court or any justice of the peace, upon application, may issue subpoena for witnesses to attend the inquisition, and such witnesses are subject to the penalties and entitled to the privileges and compensations of regular witnesses. (Id., sec. 4.)

5495. **Costs, by whom paid.**—The cost shall be paid by the party making the application, and if he shall be declared a lunatic, it shall be paid out of his estate. (Id., sec. 5.)

5496. **Decree, if of sound mind.**—Upon the return of jury, which shall be in writing and entered upon the minutes of the county court, that said person is of sound mind and competent to control himself and his property, the court shall pronounce a decree declaring such person of sound mind; and the guardianship of such person, if any exist,

shall terminate, and he may demand settlement of his guardian. (Id., sec. 6.)

5497. **Alias and pluries writ, when.**—If the jury do not agree, the court may issue an alias and pluries writ to the sheriff, who shall summon twelve other freeholders or householders to try the cause. (Id., sec 7.)

5498. **If of unsound mind, second application, when.**—If the applicant shall be declared a lunatic or person of unsound mind, so that he cannot control himself and business, no second application shall be made to the court until after one year. (Id., sec. 8.)

5499. **Application made, where.**—The application provided for herein may be made in any county where the applicant may reside, or where his property or guardianship may be. (Id., sec. 9.)

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136 LOUISIANA 957.

No. 20,784.

INTERDICTION OF GASQUET.

Jan. 25, 1915. On Application for Rehearing, March 22, 1915.

Appeal from Civil District Court, Parish of Orleans; E. K. Skinner, Judge.

Interdiction of Fernand Vaughan Gasquet. From a judgment of interdiction, defendant appeals. Affirmed, and rehearing refused. Removal to the Supreme Court of the United States upon a writ of error.

J. C. & Thos. Gilmore, and Wm. Winans Wall, all of New Orleans, for appellant. Denegre, Leovy & Chaffe, of New Orleans, for appellees.

O'Neill, J. The defendant has appealed from a judgment of interdiction. The suit was filed by his two married sisters and his two uncles, who, as far as the record discloses, are his nearest relations. During the trial, the two sisters discontinued their suit, or withdrew as plaintiffs in the case, in order that their husbands might be competent witnesses. The defendant's mother had brought suit to have him interdicted, but died about a month afterwards, and the present suit was filed a few days after her death.

In their original petition in this case, as in the petition previously filed by the defendant's mother, the interdiction is prayed for on the allegation merely that, on account of his infirmaties, Fernand Vaughan Gasquet, is incapable of taking care of his person or of administering his property, and that it is therefore advisable and necessary that he be interdicted.

The defendant filed exceptions to the petition, that its allegations were vague, uncertain, and indefinite, and did not disclose a right or cause of action.

Thereupon the plaintiffs filed a supplemental and amended petition, alleging: That the defendant was subject to an habitual state of madness, although, at times, while under the influence of narcotic drugs, he appeared to have possession of his reason; that the grand jury had, on the 7th of June, 1912, on an indictment in which the defendant was charged with shooting with intent to murder one Isaac Brown, returned not a true bill, on account of the insanity of the defendant; that, on the petition of the district attorney, on account of the grand jury's finding that Mr.

Gasquet was insane, and in accordance with the provisions of section 993 of the Revised Statutes, he was made defendant in a rule to show cause why he should not be committed to the criminal ward of the state hospital for the insane, and after a trial had contradictorily with the defendant, he was adjudged a dangerous insane person and was committed to the asylum for the criminal insane, by a judgment of the criminal district court; that, because of a lack of accommodations for the criminal insane in the state asylum, Mr. Gasquet remained in the custody of the criminal sheriff of the Parish of Orleans; that he was addicted to the abuse of alcohol and to taking narcotics; that he had a psychopathic constitution and hardening of the arteries, due to nephritis, affecting his mental faculties; and that he suffered from delusions.

In his answer, the defendant denied every allegation in the plaintiffs' petitions except the allegations referring to his prosecution for shooting Isaac Brown with intent to murder, the finding by the grand jury and the consequent commitment of the defendant to the asylum for the criminal insane. He contends that the criminal district court had no jurisdiction or authority to render the judgment committing him to the asylum for the criminal insane. He contends that section 993 of the Revised Statutes, under authority of which he was committed to the asylum for the criminal insane, is null and of no effect because it violates the article of the Constitution vesting jurisdiction and authority to pronounce interdiction in the civil district court exclusively, and because it seeks to deprive a person of his liberty without due process of law. He admitted, in his answer, that he took small quantities of morphine for the purpose af allaying physical pain, but that this was under

the direction of a competent and reputable physician, and not in such quantities as to affect his mind or render him incapable of taking care of his person or of administering his property.

(1-3) The authority under which the criminal district court committed Mr. Gasquet to the insane asylum is found in the following sections of the Revised Statutes:

> "Sec. 993. Whenever any person arrested to answer for any crime or misdemeanor, before any court of this state, shall be acquitted thereof by the jury, or shall not be indicted by the grand jury, by reason of the insanity or mental derangement of such person, and the discharge and going at large of such person shall be deemed by the court to be dangerous to the safety of the citizens or to the peace of the state, the court is authorized and empowered to commit such person to the state insane hospital, or any similar institution in any parish within the jurisdiction of the Court, there to be detained until he be restored to his right mind, or otherwise delivered by due course of law.
>
> "Sec. 994. Whenever the grand jury, upon any inquiry which they may make as to the commission of any crime or misdemeanor, by any person shall, shall omit to find a bill for the causes aforesaid, it shall be the duty of such jury to certify the same to the court.
>
> "Sec. 995. Whenever the jury, upon the general issue of not guilty, shall acquit any person for the cause aforesaid, it shall be their duty, in giving their verdict of not guilty, to state that it was for such cause."

These sections of the Revised Statutes do not authorize the criminal court to render a judgment of interdiction.

They only provide for the safe-keeping of insane persons who are accused of crime (not indicted or not convicted on account of their insanity), and who would be dangerous to society if allowed to go at large. These provisions of the law therefore do not violate the article of the Constitution which confers upon the civil district court exclusive jurisdiction to pronounce judgment of interdiction. Nor do they deprive a person of his liberty without due process of law, which means due notice and opportunity to be heard.

Several days after the judgment of interdiction was rendered in this case in the civil district court, the attorneys for the defendant presented a petition to the court of appeal, setting forth the proceedings had in the criminal district court, and praying for a writ of *habeas corpus* to be directed to the criminal sheriff commanding him to produce Mr. Gasquet in court, and praying that, after due hearing, the latter be at once released from custody and restored to his liberty. The court of appeal issued the writ and, assuming original jurisdiction, and after hearing testimony, rendered a judgment in the proceeding against the sheriff, declaring that the relator, Gasquet, had recovered his sanity, and that his being restored to his liberty would no longer be dangerous to the community, and ordering him discharged and released from custody.

When the case was called for argument in this court, the appellant's counsel filed a plea of *res adjudicata*, founded upon the judgment which had been rendered by the court of appeal in the proceedings had against the criminal sheriff while the present appeal was pending here.

The court of appeal had no jurisdiction or authority to revoke or set aside the judgment rendered by the criminal

district court committing Mr. Gasquet to the state asylum for the criminal insane, nor had the court of appeal jurisdiction of the subject-matter of the interdiction of Mr. Gasquet. Although article 104 of the Constitution provides that the courts of appeal and each of the judges thereof shall have power to issue the writ of *habeas corpus* at the instance of any person in actual custody, it does not follow that, after issuing such writ, the court may go and exercise unlimited jurisdiction. Under article 85 of the Constitution, this jurisdiction of the Supreme Court extends to suits for interdiction. And article 98 provides that the jurisdiction of the courts of appeal shall extend to all cases, civil and probate, of which the civil district court of the Parish of Orleans or the district courts throughout the state have exclusive original jurisdiction and of which the Supreme Court is not given jurisdiction, when the matter in dispute or the fund to be distributed shall not exceed $2,000, exclusive of interest.

The commitment rendered by the criminal district court in consequent of the criminal prosecution of Mr. Gasquet was not a judgment of interdiction, nor do the plaintiffs contend that it was. Hence, if the court of appeal had authority to set aside the commitment of the criminal district court and release Mr. Gasquet from the custody of the criminal sheriff, the judgment of the court of appeal would nevertheless have no effect upon the judgment of interdiction rendered by the civil district court in this suit.

(4-5) The defense of this case, on the merits, is that the evidence of the conduct and mental condition of the defendant during the period from 1896 to 1912 is of no importance—that the plaintiffs have only proven, according to the

testimony of their expert witnesses, that the defendant is morally insane, and that a morally insane person is only a profligate. Interdiction is not allowed on account of profligacy or prodigality. R. C. C., art. 426.

In the cross-examination of one of the experts who had testified to the defendant's insanity, one of the attorneys for the defendant embodied in a question the standard lexicographers' definition of a "profligate", and asked the doctor if a person of that description was a morally insane person; and the doctor answered in the affirmative. The question propounded was:

> "Q. I understand from my general examination of you, then, that a person who is not an idiot, who is not an imbecile, who is not a senile dement, who has no structural brain lesions, who is not a maniac, and who has no delusions, illusions, or hallucinations, but is an abandoned, dissolute, vitiated, depraved, vicious, wicked person, ruined in morals, abandoned to vice, lost to virtue or decency, extremely vicious, shamelessly wicked—an abandoned person, one who has lost all regard for principles of virtue and all decency, is a morally insane person?"

From the doctor's admission that a person described in the foregoing question is a morally insane person, and the description being that of a profligate, it is argued by the defendant's counsel that "moral insanity" and "profligacy" are synonymous and convertible terms; and that therefore, under the article of the Civil Code quoted above, interdiction is not allowed on account of moral insanity.

This court said, in the case of *State v. Lyons*, 113 *La.*, 962, 37 *South.*, 892, where a plea of insanity was urged by the defendant as an excuse for homicide:

"The doctrine of moral insanity, which consists of irresistible impulse coexistent with mental sanity, has no support either in psychology or law."

In the question above quoted, it is observed that all classes of insane persons—an idiot, imbecile, a senile dement, a person with structural lesions, a maniac, and a person having delusions, or hallucinations—are excepted from the description of depravity which the lexicographers call "profligacy" and which the expert witness calls "moral insanity." The fact that the authorities on insanity and psychology call profligacy moral insanity does not dispense with the provision of our Code that interdiction is not allowed on account of profligacy.

(6) Article 389 of the Civil Code provides that no person above the age of majority who is subject to an habitual state of imbecility, insanity, or madness shall be allowed to take care of his own person and administer his estate, although such person shall at times appear to have the possession of his reason. And article 422 provides that, not only lunatics and idiots are liable to be interdicted, but likewise all persons who, owing to any infirmity, are incapabe of taking care of their persons and administering their estate.

The defendant's infirmity, which, the plaintiffs contend, renders him incapable of taking care of himself or his estate, is that he has alcoholic insanity and is a victim of the morphine habit. He testified in this case, and the record of his testimony would not, in itself, warrant his interdiction. He says that he desires to be cured of the craving for alcohol and narcotic drugs, and that he intends to be cured and to reform his life. When his physician, from the wit-

ness stand, expressed the belief that he could cure the defendant if he could have absolute control of him and his surroundings, the plaintiffs' attorneys proposed, in open court, to have the case continued and the trial left open for such time as it might require for the doctor to cure the defendant by eradicating his craving for morphine and alcohol. The defendant's counsel declined the proposition, asserting that, although the defendant was an unfortunate victim of the habit which he had acquired through no moral fault of his, he was not a subject for interdiction. The plaintiffs' counsel then asked the court to continue the case in order to permit the defendant's physician to cure the defendant if he could. The request was refused.

The defendant is now 37 years of age. He began drinking to excess as soon as he came to the age of majority, and several years later, became a morphine habitue. Except during the several intervals in which he was under treatment for his alcoholic insanity and morphine poisoning, and perhaps the two or three years in which he worked, the 16 years of his manhood have been spent in drunkenness and debauchery. He underwent various treatments in several reputable institutions for alcoholism, without any success whatever, twice in 1901, again in 1903, and in 1905 and 1910; and he underwent the hyoscine treatment for his morphine habit in 1913, and the Lambert treatment for morphine twice in the same year. At the end of every treatment for alcoholism or the morphine habit, he immediately resumed the abuse of alcohol and then the morphine habit. During these years, he committed many irrational acts, was guilty of very eccentric conduct, and on several occasions displayed a dangerous disposition towards those against whom he imagined he had a grievance. He fired

both barrels of a shotgun into the face of his mother's coachman at close range, shooting the man's eye out, without justification and with very slight, if any, provocation. It was for that crime that the grand jury refrained from indicting the defendant on account of his insanity.

The defendant inherited from his father a fortune of about $90,000, which he squandered in about two years of debauchery; and, by the will of his mother, he has inherited another fortune of about $115,000.

The testimony of a number of alienists, psychologists, trained nurses, and a few non-experts who have observed the defendant's conduct during the past 16 years, covers 1,100 pages of typewritten matter, which need not be reviewed at length in this opinion. Some of the experts express the opinion that the defendant is insane, and others say he is not.

Coming from a family of wealth and refinement and possessed of considerable education, the defendant seems to have some very good attributes, and friends who sympathize with him, excuse his strange conduct, and have faith in his reforming. He has been pampered as if no responsibilities were ever intended to be imposed upon him. When he upsets all the calculations of the doctors and nurses trying to cure him of the alcohol or narcotic drug habit, by going out to a barroom and taking a drink, the failure of the cure is attributed to the fault of the deputy sheriff in not guarding Mr. Gasquet more closely. No one blames Mr. Gasquet; he is not supposed to have any responsibility for his own ruin or redemption. At times, he fully realizes his affliction and wishes to be cured, but he has acquired the habit of taking narcotic drugs and abusing alcoholic drink to such an extent that he is bereft of self-control.

(7) Act No. 100 of 1890 provides that any person who is an inebriate or habitual drunkard, and who, by reason of that infirmity, shall be unable to support himself or his family, shall be liable to be interdicted and shall be placed in the custody and care of a curator who shall have full authority and control of the person of such inebriate, with power to place him in a hospital or other institution for the treatment and cure of his infirmity.

And the Act No. 157 of 1894, making provision for the cure of indigent drunkards or inebriates, at the expense of the parish or municipality in which they reside, defines a "drunkard" as:

> "Any person who has acquired the habit of using spiritous, malt, or fermented liquors, cocaine or other narcotics, to such an extent * * * as to deprive him of reasonable self-control."

It is not disputed that the defendant has acquired the habit of using spiritous liquors and narcotic drugs to such an extent as to deprive him of reasonable self-control.

Nor can it be denied that, on account of his infirmity, he would not have been able to support himself during the past 10 years, except for the fortune he spent.

The defendant's learned counsel contend that the Act No. 100 of 1890 only applies to indigent inebriates or drunkards. They say that the defendant's inability to support himself is not to be considered, because, with the fortune he squandered and the subsequent kindness of his relations, he has not had to support himself, and, if history does not repeat itself, with the additional fortune which the defendant recently inherited, he will be well able to support himself hereafter.

The statute of 1890, however, is not, in terms, restricted to indigent persons. It provides that any inebriate or habitual drunkard who is, by reason of such infirmity, unable to support himself or his family, is liable to interdiction. And, from the requirement that the curator of such interdict must furnish bond and comply with all the formalities and requirements relating to the qualification of curators of other interdicts, it may be assumed that the Legislature had no intention to provide that only indigent persons should be interdicted for inebriacy or habitual drunkenness. Interdiction is pronounced not only for the welfare of the interdict, but with regard to the safety and welfare of society. In the case of interdiction for inebriacy or habitual drunkenness, consideration for the safety and welfare of society is emphasized by the subsequent legislative definition of a drunkard, as a person who has acquired the alcohol or narcotic drug habit to such an extent as to deprive him of reasonable self-control.

Under the terms of the statute, it will be within the power, and perhaps will be the duty, of the curator who shall be appointed to care for the interdict in this case, to place him in a hospital or other institution for the treatment and cure of his infirmity. And, when that is accomplished, there is ample provision in our law for the repeal and revocation of his interdiction.

The judgment appealed from is affirmed, at the cost of the estate of the appellant.

On Application for rehearing.

Per Curiam. Rehearing denied.

Monroe, C. J., dissents, being of opinion that the rehearing should be granted.

GASQUET *v.* FENNER, TESTAMENTARY EXECUTOR, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 261. Argued April 24, 1918.—Decided May 6, 1918.

When the laws of a State provide that final settlement of an estate in the probate court on behalf of a person under interdiction can only be had upon proceedings there setting aside the interdiction or appointing a curator, a decree of a court of another State purporting to establish his sanity notwithstanding such interdiction will not, by virtue of the full faith and credit clause of the Constitution, operate upon the interdiction directly but, at most, would be conclusive in such probate proceedings.

In such case the District Court, sitting in the State where the estate is being administered, can not dispense with such proceedings in the local probate court and require a settlement from the executors.

235 Fed. Rep. 997, affirmed.

THE case is stated in the opinion.

Mr. William Winans Wall and *Mr. G. T. Fitzhugh*, with whom *Mr. J. C. Gilmore* and *Mr. Thos. Gilmore* were on the briefs, for appellant.

Mr. George Denegre, with whom *Mr. Victor Leovy* and *Mr. Henry H. Chaffe* were on the brief, for appellees.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a bill brought by the appellant, alleging himself to be a citizen of Tennessee, to require the principal appellee, the executor under his mother's will, appointed and qualified in Louisiana, to pay over to him one-third of his mother's estate—that being the proportion to which

he is admitted to be ultimately entitled. The defendants allege that the appellant is a citizen of Louisiana and pronounced incapable of taking care of his person and administering his estate, by a judgment of interdiction of the Louisiana Courts. They say that the estate has not yet been fully administered as no final account has been filed and that until the interdiction is set aside an account can be rendered and possession of the appellant's share delivered only to a curator; but that appointment of a curator has been delayed by the appellant's having taken a writ of error from this Court to the Supreme Court of the State in respect of its interdiction decree. 136 Louisiana, 957. Dismissed, 242 U. S. 367.

Pending an application to the Supreme Court of the State for a rehearing, Gasquet, who was in custody, obtained his release on habeas corpus from a lower court, afterwards declared by the Supreme Court to have been without jurisdiction, and on July 28, 1914, established himself in Tennessee. On February 20, 1915, he filed a petition in the Probate Court of Shelby County, Tennessee, for an inquiry whether he was a lunatic, upon the same day obtained a verdict declaring him of sound mind and on February 23 a decree to this same effect, which also declared him entitled to settlement from all persons having control of any part of his estate "any disability . . . by reason of the proceedings against him hereinbefore mentioned [i. e. the Louisiana interdict] being hereby removed." Armed with this Gasquet brought the bill in the present case and contends that due faith and credit were denied to the Tennessee decree when the bill was dismissed, as it was. 235 Fed. Rep. 997.

Ordinarily, at least, a decree *in rem* is conclusive as to the facts that it establishes only as against parties entitled to be heard. *The Mary*, 9 Cranch, 126, 146. *Tilt* v. *Kelsey*, 207 U. S. 43, 52. *Manson* v. *Williams*, 213 U. S. 453. It may be argued that if the defendant was entitled to be

heard he was entitled to notice of some kind, which of course he did not receive in a proceeding that was tried on the day when it was begun, and that if he was not entitled to be heard he is not bound outside the limits of Tennessee. But we are not called upon to consider whether this and other arguments are sound that would need consideration before the plaintiff could prevail in this case, because in our opinion the decree was right for the reason given by the district judge. It may be called a matter of form rather than of substance; upon that we are not curious to inquire. It is enough that the reason seems to us sufficient. Article 420 of the Civil Code of Louisiana provides that a "person interdicted cannot resume the exercise of his rights, until after the definitive judgment by which the repeal of the interdiction is pronounced;" and article 421, that "interdiction can only be revoked by the same solemnities which were observed in pronouncing it." Whatever may be the conclusiveness of the Tennessee decree it cannot operate upon the interdiction directly. At most it can only furnish ground for a conclusive right to have the interdiction removed. When the state laws, as a condition for the final settlement of a probate decree require either the revocation of the interdict or the appointment of a curator one or the other thing must be done. It is not enough for the party to show that he has a right to have one of them done.

It is said that the appellant may have his right determined by the Court of the United States, under the decision in *Waterman* v. *Canal-Louisiana Bank & Trust Co.*, 215 U. S. 33. But the short answer is that all that could be determined in the District Court is admitted and never has been in dispute. The only obstacle in the way of giving the plaintiff his share is the obstacle in the way of a final account and settlement, which must take place in the Probate Court. By the law of Louisiana they cannot be had until either a curator is appointed or the in-

terdiction removed. Assuming that the plaintiff has every other right that he says, he cannot pursue his rights across country but must proceed along the road that Louisiana law provides.

Decree affirmed.

THE CHIEF JUSTICE took no part in the decision of this case.